DOCUMENT RESUME

ED 237 766 CE 037 809

AUTHOR Morrison, Malcolm H.
TITLE Final Report to Congress on Age Discrimination in Employment Act Studies.
INSTITUTION Employment Standards Administration (DOL), Washington, D.C.
PUB DATE 82
NOTE 47p.
PUB TYPE Reports - Descriptive (141)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Age Discrimination; Aging (Individuals); *Equal Opportunities (Jobs); *Federal Legislation; Middle Aged Adults; *Older Adults; *Retirement
IDENTIFIERS Age Discrimination in Employment Act 1967; Age Discrimination in Employment Act Amend 1978

ABSTRACT

The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination against persons aged 40 to 65; the ADEA Amendments of 1978 restrict mandatory retirement. Age 65 has been widely regarded as a customary age for retirement, given widespread eligibility for retirement benefits at that age. Substantial numbers of older workers leave the labor force. As more people continue to enjoy good health and are able to remain active through their 60s and beyond, the concept of what constitutes old age is shifting. Factors that affect the retirement decision include retirement benefits, age discrimination, mandatory retirement, and health. Findings of a study of mandatory retirement policies show that employees continued to retire at relatively early ages; competition between older workers and youth, minorities, and women was minimal; and elimination of mandatory retirement will induce older workers to remain in the labor force. The 1978 ADEA Amendments permits mandatory retirement of executives and tenured faculty members at institutions of higher education between ages 65 and 69. The provision for the second group has since expired. (Recommendations are made for elimination of the mandatory retirement age, increased information dissemination, and encouragement of implementation of nondiscriminatory older worker employment policies.) (YLB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

Final Report to Congress on Age Discrimination in Employment Act Studies

Report to the Congress Required by Section 5
of the Age Discrimination in Employment Act

Submitted to Congress in 1982

U.S. Department of Labor
Raymond J. Donovan, Secretary

Employment Standards Administration
Robert B. Collyer, Deputy Under Secretary

ED237766

CE 032809

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

. . . Older Americans possess a reservoir of experience and a depth of knowledge that is a great national resource . . . we know that many individuals have valuable contributions to make well beyond 70 years of age and they should have the opportunity to do so . . . I will back legislation which eliminates mandatory retirement requirements in government and private industry based solely on age . . . when it comes to retirement the criterion should be fitness for work not year of birth.

President Ronald Reagan
April 2, 1982

"The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress.

Such study shall include—

(A) an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978 in raising the upper age limitation established by section 12(a) of this Act to 70 years of age;

(B) a determination of the feasibility of eliminating such limitation:

(C) a determination of the feasibility of raising such limitation above 70 years of age; and

(D) an examination of the effect of the exemption contained in section 12(c), relating to certain executive employees, and the exemption contained in section 12(d), relating to tenured teaching personnel."

(Section 5 of the Age Discrimination in Employment Act of 1967 as amended in 1978)

This report is in response to the requirements of Section 5 of the Age Discrimination in Employment Act of 1967 as amended. The report was prepared by Dr. Malcolm H. Morrison with the technical assistance of Ms. Julia Stone under the general direction of Dr. Willis Nordlund, Director, Division of Program Development and Research, Employment Standards Administration, U.S. Department of Labor. The assistance of Ms. Antoinette M. Richardson and Ms. Gail F. Lewis in typing the manuscript of this report is gratefully acknowledged.

Contents

PAGE

THE AGE DISCRIMINATION IN EMPLOYMENT ACT 1

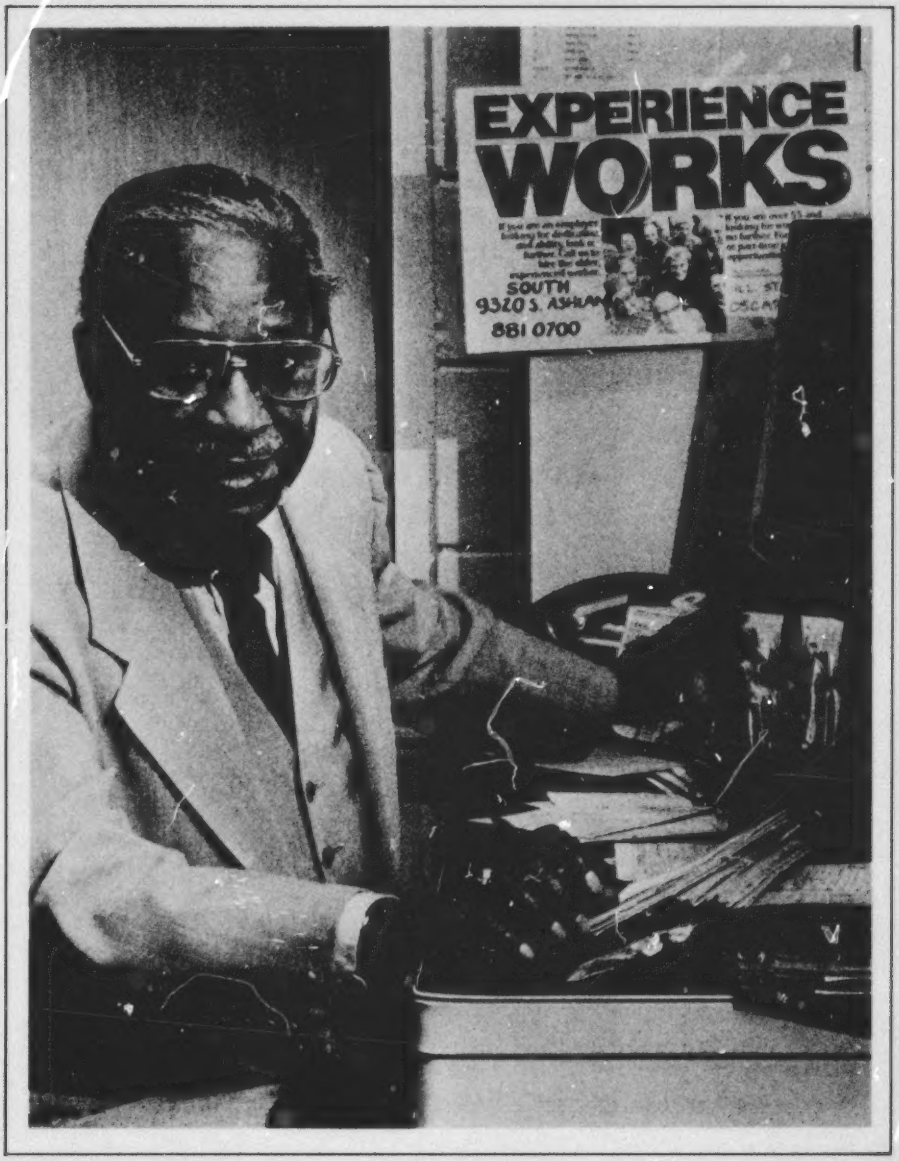
RETIREMENT IN THE UNITED STATES 9

THE RETIREMENT DECISION 17

ELIMINATION OF THE MANDATORY RETIREMENT AGE 25

MANDATORY RETIREMENT UNDER SPECIAL CIRCUMSTANCES 31

RECOMMENDATIONS 37


EXPERIENCE
WORKS
SOUTH
881 0700

The Age Discrimination in Employment Act

The Age Discrimination in Employment Act of 1967 (P.L. 90-202) took effect in 1968. It prohibited employers, employment agencies and labor organizations from discriminating against persons age 40 to 65 in hiring, job retention, compensation and other terms, conditions and privileges of employment.[1] It banned the use of employment-related advertisements indicating any preference, limitation, specification or discrimination based on age and prohibited using age as a basis for classifying or referring persons for employment.

The "age limits" in the 1967 ADEA—ages 40 and 65 were chosen to focus coverage on workers especially likely to experience job discrimination because of their age. The "upper age limit" was set at age 65 because this was a common retirement age in U. S. industry. The Age Discrimination in Employment Act Amendments of 1978 raised the upper age limit to age 70 for most private sector (and non-federal government) employment, and provided that there is no upper age limit on coverage for federal employment. The 1978 Amendments also specified that mandatory retirement was prohibited prior to age 70 for employees covered by the Act who were also covered under the terms of private pension plans.

The ADEA contains certain exceptions to its prohibitions. An employer may discharge or otherwise discipline an individual for good cause. The law's prohibitions do not apply where age is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of a particular business, or where differentiation is based on reasonable factors other than age. Also, to facilitate the employment of older workers, employers are allowed to make some age distinctions in providing fringe benefits according to the terms of a bona fide seniority system or a bona fide employee benefit plan such as a retirement, pension or insurance plan.[2]

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcement of the Age Discrimination in Employment Act of 1967 in the private sector and in State and local government employment. Enforcement responsibility was transferred to the EEOC from the Department of Labor on July 1, 1979. Responsibility for enforcement of the ADEA in the Federal sector was transferred from the Civil Service Commission to the EEOC on January 1, 1979 along with responsibility for Federal sector enforcement of Title VII of the Civil Rights Act of 1964. These actions were taken to make the EEOC generally responsible for enforcing anti-discrimination protection for older workers covered under the ADEA, as well as protection against discrimination in employment on the basis of race, color, religion, national origin and sex under Title VII of the Civil Rights Act of 1964.[3]

Original Enactment of the ADEA

Age discrimination in employment is a matter of concern for the United States today because of the need to enhance national productive capacity and attain the goal of assuring fairness in employment opportunities for all American workers. The Age Discrimination in Employment Act of 1967 (ADEA) developed during consideration of employment discrimination in Title VII of the Civil Rights Act of 1964. Section 715 of the law required that:

> "The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable."

The resulting study and 1965 report by the Secretary concerning age discrimination in employment led to the formulation and enactment of the Age

---

[1]The ADEA applies to private employers of 20 or more persons, to State and local government agencies, to public and private employment agencies serving such employers, and to labor organizations if they have 25 or more members or represent the employees of covered employers or refer persons to covered employers for employment. (Originally the Act applied to private sector employment; coverage was extended to State and local government employment, and to the Federal sector by the 1974 Amendments to the ADEA, included in the Fair Labor Standards Amendments of 1974-P.L. 93-259, 88 Stat. 55.)

[2]The latter exception is explained further in the discussion of the 1978 Amendments, below.

[3]This was accomplished under Executive Reorganization Plan No. 1 of 1978, transmitted to the Congress on February 23, 1978.

Discrimination in Employment Act. The Report focused on older workers not being hired because of age discrimination. It identified "arbitrary discrimination" as involving rejection of older workers because of assumptions about the effect of age on their ability to do a job when there is in fact no basis for these assumptions. This discrimination was distinguished from decisions not to employ a person for a particular job when there is in fact a relationship between the individuals's age and his (or her) ability to perform the job.[4]

Apart from arbitrary hiring discrimination in the form of specific age limits "indiscriminately applied," the 1965 Report recognized the effect on older workers' employment prospects of "factors of circumstance," such as personal health, educational attainment, and displacement of older industries due to technological change. Specifically with regard to pension plan arrangements, it noted that cost considerations do not always operate against the older worker, and it stated that:

> "The extent to which the range of pension plan-induced limitations on employment can be considered to constitute arbitrary discrimination is not a simple matter, particularly in the light of great variations in plan provisions and employer practice."[5]

The 1965 Labor Department report noted that while age 65 had been the usual age for anticipating retirement in most private pension plans as well as under the Social Security program, recent developments had included (a) some lowering of the age norms and (b) the addition of "special early retirement" clauses in private pension plans, providing higher benefits than "normal" as incentives toward earlier retirement. The report further observed that the spread of compulsory and automatic retirement provisions had lowered the age of retirement for many who wanted to continue to work beyond age 65—with about one-third of men retired under Social Security considering their retirement as involuntary, and about 10 percent of those retired under corporate early retirement plans, regarding their retirement as involuntary.[6] The Age Discrimination in Employment Act of 1967 was designed to substantially limit the imposition of mandatory retirement prior to age 65, and protect older workers against arbitrary discrimination based on age in the terms and conditions of employment.

In enacting the ADEA in 1967, the Congress expressed concern about mandatory retirement in Section 5 of the new law, directing the Secretary of Labor "to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement and to report his findings and any appropriate legislative recommendations to the President and the Congress."

"Mandatory Retirement"—Focal Issue of the ADEA Amendments of 1978

Public concern regarding the issue of mandatory retirement led to the Age Discrimination in Employment Act Amendments of 1978 (Public Law 95-256). Attention focused on mandatory retirement at age 65, which was permitted under the 1967 ADEA law. Because of the age 65 upper limit on coverage, employees who had reached that age were not protected under the Act. Also, an exception to the Act's provisions designed to encourage the hiring of older workers stated that an employer, employment agency or labor organization was not prohibited from "observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of the Act, except that no employee benefit plan shall excuse the failure to hire any individual." This permitted the mandatory retirement of employees at various ages when "normal" pension benefits were available—often prior to age 65.

Mandatory retirement requirements have been an important structural feature of private pension plans and employment practices in the United States even with widespread withdrawal from the labor force prior to age 65. Data from a 1973 Employer Practices Survey conducted by the Bureau of Labor Statistics indicated that approximately half of the private

---

[4]U.S. Department of Labor, *The Older American Worker, Age Discrimination in Employment, Report of the Secretary of Labor to the Congress Under Section 715 of the Civil Rights Act of 1964*, June 1965, p.2.

[5]Ibid., p. 17.

[6]Ibid.

nonagricultural labor force was subject to mandatory retirement provisions.[7] Most of the provisions set the mandatory retirement age at 65. Some employers used a higher age, and a very few stipulated a lower age. Mandatory retirement requirements specifying age 65 as the age at which retirement was required applied to approximately 42 percent of the nonfarm work force. For public employment—in the Federal sector and for many State and local government employees—age 70 was a common standard for mandatory retirement.

In the Congressional deliberations which led to enactment of the 1978 ADEA amendments, the following themes were advanced in support of action to restrict mandatory retirement age practices.[8] Individual ability to perform a job rather than arbitrary age distinctions, should be the basis for continued employment. Public opinion, as evidenced in a 1974 Harris survey was opposed to forced retirement based on age.[9] As Americans experience greater longevity and the number of older persons grows, those who are capable of working beyond 65 should be permitted to do so. Because of widespread retirement before age 65, a relatively small portion of the work force had actually been forced to retire between age 65 and 70; and the availability of fully accrued pension and Social Security benefits at age 65 should continue to facilitate voluntary retirement at age 65. Medical evidence had suggested that mandatory retirement could have a detrimental effect on a person's physical, emotional, and psychological health, and even on his or her life span; following retirement, many people had experienced financial difficulties because of decreases in income which often accompany retirement, difficulty in finding reemployment, longer life spans over which to stretch savings, erosion of fixed pensions by inflation, and, (especially for women who had entered the labor force after raising a family or being widowed or divorced) reduced private pension benefits as a result of mandatory retirement. It was also suggested that forced retirement of capable older workers results in increased demands on governmental retirement income programs, such as Social Security, Supplemental Security Income and various public assistance programs at State and local levels, as well as the Federal level.

During Congressional hearings on the legislation, employers had expressed apprehension as to the possible consequences of raising the mandatory retirement age. The major areas of concern were possible adverse effects that might result from such action including: (1) the possibility of an adverse impact on employment opportunities for young people and on promotional opportunities for mid-level employees—including minorities and women; (2) uncertainty regarding workers' productivity beyond age 65 and the potential administrative burden in evaluating employee performance; and (3) possible implications for pension plans.

During the Congressional deliberations on the legislation the following considerations were advanced to reduce fear of the impact on the labor force of raising the mandatory retirement age: (1) with widespread early retirement, a relatively small portion of the workforce was actually forced to retire between age 65 and 70; (2) the availability of full accrued pension and Social Security benefits at age 65 could be expected to continue to facilitate voluntary retirement at age 65, despite ADEA protection against mandatory retirement before age 70; (3) forced retirement of workers at age 65 does not necessarily generate a corresponding number of job vacancies—for example, during periods of cutbacks, employers may reduce their work force by not replacing workers who retire; and (4) the numbers

---

[7]The Employer Policies and Practices Survey was conducted in September of 1973 by the Bureau of Labor Statistics for the Employment Standards Administration of the Department of Labor. Results of this survey were reported in: Department of Labor, Employment Standards Administration, *Age Discrimination in Employment Act of 1967, A Report Covering Activities Under the Act During 1976, Submitted to Congress in 1977 in Accordance with Section 13 of the Act*, pp. 34-37 and pp. 72-73.

[8]The following documents constitute the legislative history of the ADEA Amendments of 1978:

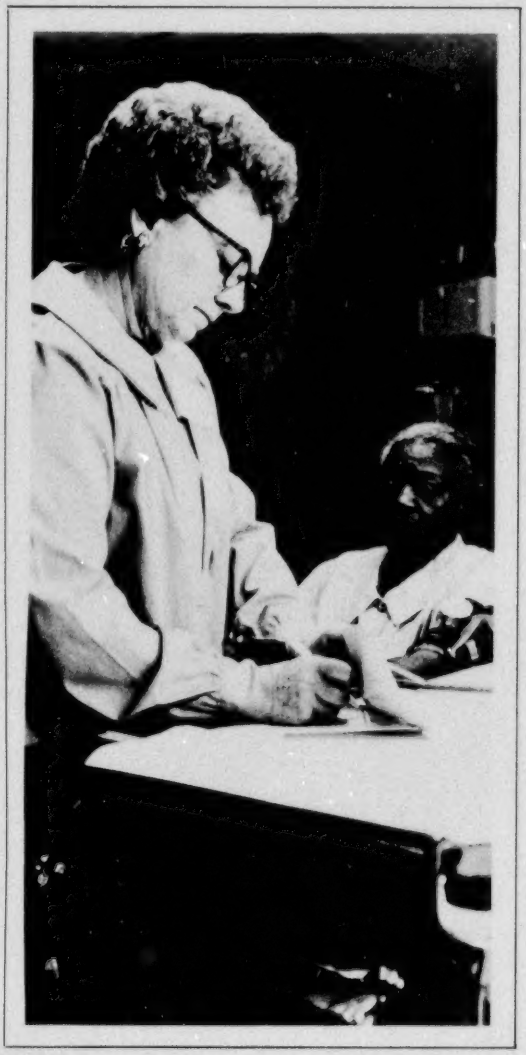
House Reports: No. 95-527, pt. 1 (Committee on Education and Labor) and No. 95-950 (Committee of Conference).

Senate Report No. 95-493 (Committee of Conference).

Congressional Record: Vol. 123 (1977): September 13, and 23 considered and passed House, October 19, considered and passed Senate, amended. Vol. 124 (1978): considered and passed Senate., amended. Vol. 124 (1978): March 21, House agreed to Conference Report, and March 23, Senate agreed to Conference Report.

Weekly Compilation of Presidential Documents Vol. 14, No 14. (1978): April 6, Presidential Statement.

[9]*The Myth and Reality of Aging in America*, Survey conducted for the National Council on the Aging, Inc., Washington, D.C., 1975, pp. 213-216.



of young people seeking jobs would be considerably lower in coming years than had been the case over the previous decade, as entry of the post-World War II baby boom generation into the labor force had passed its peak. As an indication of the labor force impact that could be anticipated, the Department of Labor estimated in 1977 that if ADEA protection against mandatory retirement before age 70 had already been fully in effect in 1976, only approximately 200,000 additional persons in the 65 through 69 age range would have remained in the labor force—as compared to the addition of about 3 million jobs to the nation's workforce during that year.

With regard to the issue of productivity, research was cited to demonstrate that chronological age alone is a poor indicator of ability to perform a job. Although certain physical capacities of an individual may decline with age, lessened ability in some respects may be more than compensated for by attributes that often increase with age, such as judgment and experience. Research findings were cited as evidence that the productivity of older workers can be equal or superior to that of younger workers in terms of quality and quantity of work, dependability, judgment, human relations, attendance and on-the-job safety. Employment of 2.7 million people age 65 and older in 1976 was noted as an indication that people can continue to work productively beyond age 65.

In response to concerns about the need for greater administrative effort to evaluate the performance of employees on an individual basis, proponents of raising the mandatory retirement age emphasized the need for managerial responsibility to assure high-quality performance at all age levels.

Rather than viewing across-the-board mandatory retirement at a given age as a means for people to retire without a negative stigma, opponents of the practice asserted that it inflicts greater pain by depriving productive older people of jobs and stigmatizes older people in general as less productive.

With regard to the impact of clearly prohibiting mandatory retirement requirements in pension plans, the Department of Labor assured the Congress that the ADEA amendments would not interfere with any of the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). For example, the amendments

did not change ERISA's use of the term "normal retirement age" for designating the age under a given pension plan at which a worker is eligible to receive full retirement benefits (without actuarial reductions on account of early retirement). Also, employers were permitted to cease crediting service and adjusting pension benefits after the normal retirement age in the plan.[10]

In response to employer concerns as to possible cost increases in other employee benefits such as life, health, and disability insurance programs, regulations provided that such benefits could be reduced as workers advance in age, to the extent necessary to achieve approximate equivalency in costs between older and younger workers.

The ADEA Amendments of 1978 Restrict Mandatory Retirement

The Age Discrimination in Employment Act Amendments of 1978 addressed the issue of mandatory retirement by raising the Act's upper age limit on coverage from age 65 to 70 and added language to Section 4(f) (2) of the Act specifying that "no *bona fide* seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual" within the age limits on coverage specified in the Act. Thus, mandatory retirement was prohibited until age 70 for most private sector employment and in most State and local government employment.

Raising the upper age limit extended the protection of the Act to cover workers until age 70, including protection against involuntary retirement in the form of discharge or termination of employees eligible for Social Security retirement benefits (as well as possible private pension benefits). Modification of the 4(f) (2) provision clearly prohibited mandatory retirement before age 70 under private pension plans. In conjunction with this, retention of an "upper age limit" at age 70, in effect established the permissible mandatory retirement age at 70.[11]

Mandatory retirement at ages 65 to 69 (as well as beyond the age 70 coverage limit) was allowed to continue for tenured faculty in institutions of higher education until July 1, 1982, and indefinitely for certain high-level executives and policymakers.[12]

The provision relating to tenured faculty in institutions of higher education was a response to concern regarding declining enrollments and faculty reductions resulting from demographic trends. Advocates of this exemption asserted that the prohibition against mandatory retirement until age 70 could result in the faculty reductions having a disproportionate impact on recently hired, untenured faculty—particularly women and minorities. There was also some concern that current financial difficulties of colleges and universities could be exacerbated by requiring retention of highly paid senior faculty beyond age 65 without allowing for budgetary planning. In addition, concern was expressed that the nature of tenure agreements, designed to protect the academic freedom of faculty, might be compromised without such an exemption. Opponents of the exemption contested assertions that tenure precludes performance evaluations and discharge for incompetence, they reiterated general arguments against mandatory retirement, and they noted that older women and minorities would be among older faculty members affected by the exemption. Because this provision expired on July 1, 1982, mandatory retirement of such

[10]Identical letters from Department of Labor Assistant Secretary for Employment Standards Donald Elisburg to Senator Harrison A. Williams, Jr. and Congressman Augustus F. Hawkins, September 8, 1978, reprinted in the legislative history to the 1978 Amendments in Senate Report 95-493, pp. 14-16 and Congressional Record, September 23, 1977, p. H9977.

[11]The Act's exceptions to its prohibitions continue to allow discipline and discharge of an individual for good cause, and continue to permit mandatory retirement where age is a bona fide occupational qualification for a particular type of work. (The bona fide occupational qualification provision has been found to apply, for example, to law enforcement jobs and to certain transportation jobs involving responsibility for public safety, which may have mandatory retirement requirements even before age 65.)

[12]The language of the exceptions, contained in Sections 12(c) and 12 (d) of the Act, is as follows:

12(c) "Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who, for the 2-year period immediately before retirement is employed in a bona fide executive or high policymaking position, if such employee is entitled to an immediate, non-forfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals in the aggregate, at least $27,000."

12(d) "Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education . . ."

faculty members in institutions of higher education is now prohibited until age 70.

The exemption allowing the mandatory retirement of high-level executives and policymakers at ages 65 through 69 applies only if an individual has been employed in "a bona fide executive or high policymaking position" for the 2 years prior to mandatory retirement and is entitled to an immediate nonforfeitable annual retirement benefit provided by the employer equivalent to straight-life annuity of at least $27,000 per year. This amount excludes retirement benefits attributable to contributions of prior employers or to employee contributions. It also excludes retirement income from Social Security. The definition of "bona fide executive" set forth in regulations under the Fair Labor Standards Act[13] should be met for an individual to come within the scope of the exemption as an executive. Employees in high policymaking positions were placed in the exemption to encompass high-level personnel whose positions and responsibilities give them a significant role in the development and implementation of corporate policies though they may have little or no line authority.[14] The reasons cited for this exemption were the need to assure promotional opportunities—especially for mid-level employees and for achieving affirmative action goals—and the difficulty involved in evaluating the performance of top executive personnel.

The 1978 ADEA Amendments addressed the issue of mandatory retirement in the Federal sector by repealing a generally applicable mandatory retirement requirement that had applied to Federal employees when they reached age 70 and had 15 years of federal service, and provided for ADEA application to Federal employment without any upper age limit.[15]

Proponents of complete elimination of mandatory retirement had advocated removal of an upper age limit from the Act. They viewed extension of the Act's application until age 70 for most workers as a first step towards elimination of mandatory retirement, and as a reasonable compromise with those who felt uncertain of the consequences of changing the age 65 limit in the Act. Prior experience with a mandatory retirement age of 70 for federal employees was cited as a precedent indicating that raising the upper age limit to age 70 would be reasonable.

In response to interest in the possibility of completely eliminating the upper age limit on coverage under the ADEA, the Congress included provisions in the 1978 Amendments to the Act requiring the Department of Labor and the Office of Personnel Management (OPM) to study the effects of the Amendments. The OPM study was required to examine the effects of the 1978 amendments extending ADEA protection without any upper age limit and repealing the age 70 mandatory retirement requirement in the federal sector, and a report was required in 1980.[16] The Department of Labor was required to examine the consequences of raising the mandatory retirement age to 70 for employees and employers, evaluate the feasibility of raising or eliminating this age and study the effects of the executive and tenured faculty exemptions in the Act. An interim report on study findings was submitted to the President and the Congress in 1981,[17] and the law required submission of this final report in 1982.

---

[13]See 29 Code of Federal Regulations, Part 541, Section 541.1.

[14]A detailed discussion of the intended scope of the exemption is contained in House of Representatives Report No. 95-950, Conference Report, March 14, 1977, pp. 9-10.

[15]The amendments did not repeal mandatory retirement provisions applicable to Federal employees in certain specific occupations—air traffic controllers, law enforcement officers, firefighters, employees of the Alaska Railroad, the Panama Canal Company, the Canal Zone Government, the Foreign Service, and the Central Intelligence Agency. However, Congressional Committees which have jurisdiction over such employment in the Federal Government agreed to review the remaining mandatory retirement provisions to determine if they should be continued.

[16]"An Interim Report on The Effects of the Age Discrimination in Employment Act Amendments of 1978 on The Federal Workforce", The U.S. Office of Personnel Management, Washington, D.C., January, 1981.

[17]"Interim Report on Age Discrimination in Employment Act Studies" Employment Standards Administration, U. S. Department of Labor, December, 1981.

There are two basic indicators as to whether a person is generally considered retired—the decision to discontinue participation in the labor force and the receipt of employment-based pension benefits, annuity or similar retirement income. These factors may operate separately or together to give a person retirement status. Clearly, eligibility for retirement benefits (including Social Security benefits) is important in making it possible for older workers to opt to withdraw from full-time career employment. Those whose incomes are adequate and who have a preference for pursuing liesure activities or personal interests (including nonpaid volunteer work) may completely leave the labor force. Discouraged workers who desire to work but do not find jobs, and individuals who are unable to work due to severe disability or chronic ill health, are also among those whose participation in the labor force is discontinued—often even before becoming eligible for retirement benefits. On the other hand, there are older workers who continue employment on a part-time basis—some self-employed and some retired from full-time jobs, who receive pension benefits, work part-time and can be considered partially retired. There are also people who continue full-time employment in addition to receiving retirement benefits—for example, individuals who continue working beyond age 70 and receive full Social Security benefits (without an earned income offset), and individuals who move to a new job after claiming pension benefits from a long-term former employer.

In general when people say they are retired, they mean that they have substantially withdrawn from the labor force. A few who consider themselves retired engage in some part-time work. However, those who continue to maintain some type of labor force attachment often consider themselves partially retired.

Americans have always placed a high value on individual self-reliance and working for a living. The concept of workers accruing entitlement to deferred benefits during their working years to provide them a decent standard of living in their later years of being "retired" from the labor force is a relatively recent phenomenon. The increasing availability of such retirement income benefits, linked to employment, has made it possible for millions of American workers to choose—*voluntarily* to retire from employment in their later years.

Establishment of the Social Security system was obviously crucial in establishing the social norm whereby workers in the United States generally anticipate retiring from the labor force when they are older, and receiving retirement income benefits based on an earned right to benefits because of their work history. With the advent of the Social Security system, existing private pension plans were re-evaluated to some extent as to their purpose. They have come to be viewed more as a means for enabling retired workers to maintain their pre-retirement living standards in their later years, and for assisting employers in workforce planning. Private pension plan retirement benefits have been particularly important in supplementing the base provided by Social Security for managerial and professional workers, and for organized industrial workers. More and more non-agricultural workers are obtaining coverage under private pensions and will receive benefits in future years.

Private pensions have become an important feature of employment arrangements for a substantial portion of the labor force during the post-World War II period. In 1940, private pension plans covered only about a tenth of the nonfarm labor force. Since enactment of the Revenue Act of 1942, allowing tax-exempt status for tax qualified pension plans that do not discriminate in favor of highly compensated employees, the tax code has fostered the broad coverage of employees whose employers provide pension plan benefits. The spread of private pension plans was promoted by a National Labor Relations Board ruling, in 1948 that retirement pensions were subject to compulsory collective bargaining under the Taft-Hartley Act.[18] Labor unions in major industries responded by bargaining for new pension plans, improved benefits and negotiated plans. Tax consideration making contributions to pension funds on behalf of sole proprietors, tax-deductible under the 1962 Keogh Act helped encourage even small employers to participate in pension plans.

[18] *Inland Steel v. United States of America* 77 NLRB 4 (1948); upheld on appeal *United Steelworkers of America CIO, et. al., v. National Labor Relations Board*, U.S. Court of Appeals, Seventh Circuit, September 23, 1948.

In 1979, approximately half of all workers in the U.S. were covered by pension plans. Among workers ages 25-64, 56 percent were covered. Coverage (of workers ages 25-64) varied among sectors of the economy—from 85 percent in public employment (Federal, State and local), 70, 73 and 74 percent, respectively in mining, manufacturing and transportation and 58 percent in the finance industry to 46, 41 and 36 percent respectively in construction, trade and services sectors. Pension coverage was more prevalent among workers with higher annual earnings. Over 70 percent of workers whose annual earnings exceeded $15,000 were covered by a pension plan, about 60 percent in the $10,000 to $15,000 annual earnings range were covered, fewer than 40 percent of those earning $5,000 to $10,000 a year and only 13 percent of those earning less than $5,000 a year were covered.[19] With vesting rights applicable to a greater extent than in the past, an increasing proportion of workers can anticipate receiving income from private pension plans in the future.

The instutitonal arrangements for providing Social Security and private pension plans, designed to enable older workers to continue to meet their income needs after they leave the labor force, have enabled many Americans who desire to retire to do *so voluntarily* by the time they are in their mid-60's. Broad coverage of American workers under the Social Security system complemented by private pension coverage for a very substantial portion of the labor force, together represent an institutional framework in which American workers anticipate retiring from the labor force and thus retirement by workers by their mid-60's has become a typical and generally accepted pattern in the nation.

Retirement Age

Age 65 has long been widely regarded as a customary age for retirement, given widespread eligibility for retirement benefits at that age as provided for by the Social Security Act of 1935. The Social Security system and most private pension plans calculate "full benefits" based on use of age 65 as the assumed "*normal retirement age*." Except for individuals with less than 10 years of service, the Employee Retirement Income Security Act (ERISA) does not allow pension benefits to be calculated on the basis of a "normal retirement age" later than 65.[20]

The actual age(s) at which people retire vary over a wide range. The variation does not strongly substantiate the notion of retirement at age 65 being a behavioral norm. Despite the fact that under Social Security and most private pension plans, eligibility for "full benefits," is based on retirement at age 65, many people take advantage of the availability of Social Security benefits at age 62—even though the resulting monthly benefit level is significantly reduced throughout the rest of the recipient's life. In recent years, more than 60 percent of retirees have accepted such "early" retirement benefits prior to age 65 under the Social Security program.

Since Social Security benefits are only slightly increased for work beyond age 65, the program provides little financial incentive for people to continue working. To a substantial degree, structural features of private pension plans similarly tend to provide few financial incentives for postponing retirement beyond age 65. For example, under both the ADEA, and ERISA, pension plans are not required to provide credit or benefit adjustments for employment after age 65. Thus, employers have considerable latitude in structuring pension plan benefits and have not generally chosen to provide financial incentives for people to continue working beyond age 65. In fact, to some extent, some private pension plans provide special benefits to facilitate "early retirement" at ages younger than age 65. Where such "early retirement benefits" are available, they are often the result of collective bargaining and reflect the desire of employees to have

---

[19]President's Commission on Pension Policy, *Coming of Age: Toward a National Retirement Policy*, February 26, 1981, Tables 11 and 12, pp. 27 and 29, respectively.

[20]ERISA requires that:

"Each pension shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

(1) The date on which the participant attains the earlier age of age 65 or the normal retirement age specified under the plan,
(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or
(3) the participant terminates his service with their employer."

(P.L. 93-406, September 2, 1974 Section 206(e))

Retirement Ages For Individuals Who Retired With a Pension During 1976-1979

Age of Retirement	Number of Retirees Retiring by a Given Age (in thousands)	Portion Retiring at a Given Age	Culmulative Proportion Retiring by a Given Age
50	5,828	0.6	0.6
51	7,878	0.8	1.4
52	8,221	0.8	2.2
53	10,394	1.0	3.2
54	11,103	1.1	4.3
55	40,238	4.0	8.3
56	31,452	3.1	11.4
57	29,145	2.9	14.3
58	30,688	3.0	17.3
59	32,799	3.2	20.5
60	57,529	5.7	26.2
61	51,222	5.1	31.3
62	145,301	14.4	45.7
63	118,392	11.7	57.4
64	67,406	6.7	64.1
65	212,179	21.0	85.0
66	73,971	7.3	92.4
67	23,244	2.3	94.7
68	15,631	1.5	96.2
69	9,700	1.0	97.2
70	9,410	0.9	98.1
71	4,088	0.4	98.5
72	4,485	0.4	98.9
73	2,932	0.3	98.2
74	1,279	0.1	99.4
75	1,081	0.1	99.5

SOURCE: U.S. Department of Labor, Labor Management Services Administration

the option of retiring voluntarily before they reach age 65.

The wide dispersion in the ages at which people actually retired with private pension benefits is indicated in the following table which reflects the results of a sample survey of individuals who retired with pensions during the years 1976-1979.

Although there is a bulge in retirements at age 65, when full Social Security benefits and, most often benefits under private pension plans are available, that was the actual retirement age for only about one-fifth of the people in the survey. This compared with almost one-third of the individuals retiring with pensions between age 50 and age 62, approximately one-third at

age 62 through 64, and about one-sixth retiring after age 65.

Older Worker Labor Force Participation

In a broader sense, the degree to which people retire from the labor force at various ages is reflected in labor force participation rate data. Experience has shown that the best available measure for evaluating retirement trends is labor force participation data collected by the Department of Labor. This data indicates whether people are participating in or have withdrawn from the labor force. Withdrawal from active employment is evidenced by decreasing participation rates for men in their 50's and 60's. Older worker's usual behavior pattern—for men and women—is total withdrawal from the labor force by their mid-60's.

Labor force participation by men aged 65 and over has been declining since before the turn of the century. Between 1890 and 1940 the participation rate dropped from 71 to 41 percent. This decline has continued over the past three decades with the participation rate dropping from 46 percent in 1950 to 18 percent in 1981. Thus, in thirty years the proportion of men over 65 in the labor force has dropped from almost one in two to less than one in five. Only 13 percent of all people age 65 and older currently participate in the labor force—three million such workers. Labor force participation has historically been higher for men aged 55-64. Their participation fluctuated between 94 and 87 percent between 1890 and 1956. However, over the past ten years, there has been a significant decline in participation evidenced by the rate dropping from 83 percent in 1970 to 71 percent in 1981. Labor force participation has also been dropping for men aged 45-54 who historically have had extremely high rates of participation approaching 100 percent. However, between 1965 and 1981 their rate dropped to 91 percent. Thus, labor force participation of men aged 65 and over continued to decline significantly during the last 20 years and has been accompanied by more recent declines in participation of men 45-64 years of age.

Women's labor force participation has differed considerably from that of men. Overall participation of all women increased from 34 percent in 1950 to 52 percent in 1980. Except for persons aged 65 and over, all age groups of women have increased their share of labor market participation. For example, the labor force participation rate for women aged 55-64 increased from 27 to 42 percent between 1950 and 1981. A similar pattern occurred for those aged 45-54, almost 60 percent of whom were in the labor force in 1981. It appears that these sharp rates of increase have slowed somewhat recently and it should be noted that participation by women aged 65 and over has remained between 8 and 10 percent since 1950.

Thus, substantial numbers of older workers not only age 65 and older, but also men from their middle fifties onward have been leaving the labor force. Overall, in the 1970's there was an increasing propensity for older men to leave the labor force before age 65 and a moderation in the trend of increased labor force participation by older women. If labor force participation rates had remained at their 1970 level throughout the decade, about 1 million more persons aged 45-64 would have been in the labor force in 1980 than were in fact participating.

The Bureau of Labor Statistics has estimated future labor force participation rates for older workers under various population and labor force growth assumptions. Intermediate projections indicate that in the next ten years total labor force participation will rise by about four percent which represents a substantial increase in women's participation sufficient to offset a continuing decline in the participation rate for men 55 years of age and over. The projections indicate that in 1990 only 15 percent of men and 6 percent of women aged 65 and over will be in the labor force and, thus, total participation by older workers will drop to 10.5 percent.

Data concerning unemployment of older workers—those participating in the labor force but not currently employed—shows older workers experiencing lower unemployment rates than younger workers, but indicates that older workers who lose their jobs have more difficulty in obtaining new jobs. In 1980, the unemployment rate for workers age 65 and older was 3.1 percent, and 3.4 percent for workers ages 55-64, as compared with a 5.4 percent unemployment rate for workers ages 25-54, and 7.1 percent for all workers age 16 and over. The duration of unemployment for unemployed jobseekers age 65 and over in 1980 was 16.3 weeks, jobseekers ages 55-64 averaged 18.4

weeks of unemployment, and those aged 45-54 averaged 17.0 weeks, as compared with 13.8 weeks for all workers aged 16 and over.

There is evidence that long periods of unemployment experienced by older workers often lead to their early, involuntary retirement as they cease to search for employment and become "discouraged workers." The Department of Labor compiles data regarding *non*participation in the labor force. Not surprisingly a substantial majority of people age 60 and older who are not in the labor force indicate that they do not want a job—98 percent according to 1981 data. Of the men, 83 percent of those who did not want jobs cited retirement as their current status, and 11 percent cited illness or disability. Of the women, 74 percent cited keeping house, 19 percent cited retirement, and 6 percent cited illness or disability as their current status.

Most people in the 25-59 age range who desired to work but did not participate in the labor force and thought they could not get jobs in 1981, attributed the unlikelihood of getting jobs to job market rather than to personal factors. In contrast, people age 60 and over were almost as likely to indicate a belief that employers thought they were too old, (a personal factor) as they were to indicate that they could not find a job or that they thought no jobs were available (job market factors). Among persons age 60 and older who indicated personal factors for believing they could not get a job, 88 percent indicated believing that employers thought them *too old* and 12 percent indicated lack of education or other personal handicap as the reason. By comparison, among people aged 25-59 who were not in the labor force and thought they could not get jobs due to personal factors only 18 percent cited a belief that employers thought them too young or too old, 49 percent indicated lack of education or training, and 33 percent indicated other personal handicaps. Thus, older workers tend to believe that they will face age discrimination when seeking employment.

Part-time employment is very important among older workers who participate in the labor force beyond age 65. Approximately half the people age 65 and older who were working in 1979 were employed part-time—44 percent of the women and 56 percent of the men. This compares with only 14 percent of workers under age 65 working on a part-time basis—fewer than 5 percent of the men and approximately 20 percent of the women in the 25-65 age range in 1979.

Demographic Changes

Demographic and labor force trends have important implications that need to be considered in studying the interaction between age discrimination and retirement where involuntary retirement is of concern.

Life expectancy at birth in the United States has increased dramatically during this century. On average, persons born in 1900 could expect to live 47 years. Life expectancy at birth rose to 62 years in 1935 and was 65 years in 1944. Persons born in the 1960's could expect to live on average, 70 years. In 1978, life expectancy had further risen to 73.3 years—69.5 years for males and 77.2 years for females.

Decreases in mortality rates in the younger age ranges earlier in this century have made it possible for more people to live longer. Combined with high birth rates and immigration in the late 1800's and the first two decades of this century, this has led to increasing numbers of older Americans in our current population. Furthermore, life expectancy at older ages has been increasing—especially in the post-World War II period, due in large part to significant declines in the number of deaths due to heart disease and stroke. On average, persons reaching age 65 in 1978 could expect to live another 16.3 years—men approximately 14 years (to age 79) and women approximately 18 years (to age 83). Thus, more and more people can expect to continue living well into their 70's and 80's.

In 1900, there were 3 million people age 65 and older in the United States; in 1930, there were about 6½ million; and in 1980, 25 million. At the turn of the century, only one out of every 25 persons—4 percent of the U.S. population—was 65 or older. Today, approximately one in nine—about 11 percent—of the population is in this age range. By the year 2010, this age group is projected to include 32 million people, (12 percent) and by 2030, with the entry of the post World War II baby boom cohort into this age range, there will be some 55 million people age 65 and older (18 percent of the population).

The 1965 report by the Secretary of Labor concerning age discrimination in employment, which led to

enactment of the ADEA observed that:

> Although scientists and doctors have extended life with almost incredible ingenuity, and have eased some of the physical pains of old age, there has been no comparable invention regarding the uses of these long years of vigorous active life that now commence at the point where, until almost this generation, life began rapidly to ebb. Yet, this is in truth a miracle, . . . and it is hardly to be wondered that it has brought with it new problems as yet unsolved, indeed as yet hardly examined.[21]

As more people continue to enjoy good health and are able to remain active through their 60's and into their 70's and 80's our concept of what constitutes "old age" may be shifting. The increased life expectancy from 62 years when the Social Security Act was enacted in 1935 to more than 73 today, along with the visibly increasing numbers of people living into their 80's and beyond make this apparent. Although people in their 60's may well be considered "Older Americans," in the future, the term "old age" may be more commonly used to refer to people living into their 80's and 90's than to "younger" people in their 60's and 70's.

Enactment of the ADEA in 1967 and the strong interest in placing restrictions on mandatory retirement evidenced in the enactment of the 1978 Amendments, represent important developments in addressing the need to revise stereotyped notions inherited from the past as to what constitutes "old age" and what employment policies are appropriate for workers in their middle and later years.

With the number of people reaching age 65 increasing and longer life expectancy for people who reach this age, more and more older Americans will live longer healthier lives. Coupled with the trend to earlier retirement, this adds up to many people—and a larger portion of the total population—retiring with the prospect of many more retirement years ahead of them. A comparison of the population age 65 and older—most of whom have retired from the labor force, with the population in the 18 to 64 age range—generally considered the working years, gives a rough indication of the degree to which the retired population depends on the working-age population to produce goods and services they consume. This "old age dependency ratio" has doubled since 1930—18 people over 65 per 100 age 18-64 as of 1980, compared with 9 people over 65 per 100 in the 18-64 age range in 1930. This ratio will remain fairly constant during the coming 30 years, and will then rise as the post-World War II "baby boom" generation moves from the age 18-64 category into the over 65 age group. By 2020, there will be 26 people in the over age 65 group for every 100 in the 18-64 range and by 2030 the ratio will rise to more than 30 people over 65 per 100 aged 18-64. If present early retirement trends continue in the future, the costs of supporting a very large retired population will be quite high for the working age group.

Insofar as people choose to continue working into their 60's and later and continue to contribute to Social Security, private pension plans, and accumulate personal retirement funds, they can contribute to assuring the availability of the goods and services and the financial resources to assure a decent living standard for the retired population—including the later retirees themselves. To the extent that older people continue to participate in the economy by choosing to work longer, they also contribute to providing goods and services needed in the economy as a whole. While some may desire to continue working in types of employment that they have pursued prior to becoming eligible for retirement benefits, others may choose to pursue other activities. Data as to older person's interests indicate that the majority of currently retired persons and those approaching retirement now suggest that they would be interested in part-time employment. This is supported by the fact that of all persons over age 65 now working, more than half are employed part-time. But, the degree to which preferences for part-time or full-time employment will be actualized by older workers in the future depends upon numerous factors including financial incentives to continue employment, employer personnel policies, personal preferences of older persons, and overall economic growth.

[21] U.S. Department of Labor, *The Older American Worker . . ., op. cit.*, P.I.

Voluntary and Involuntary Retirement

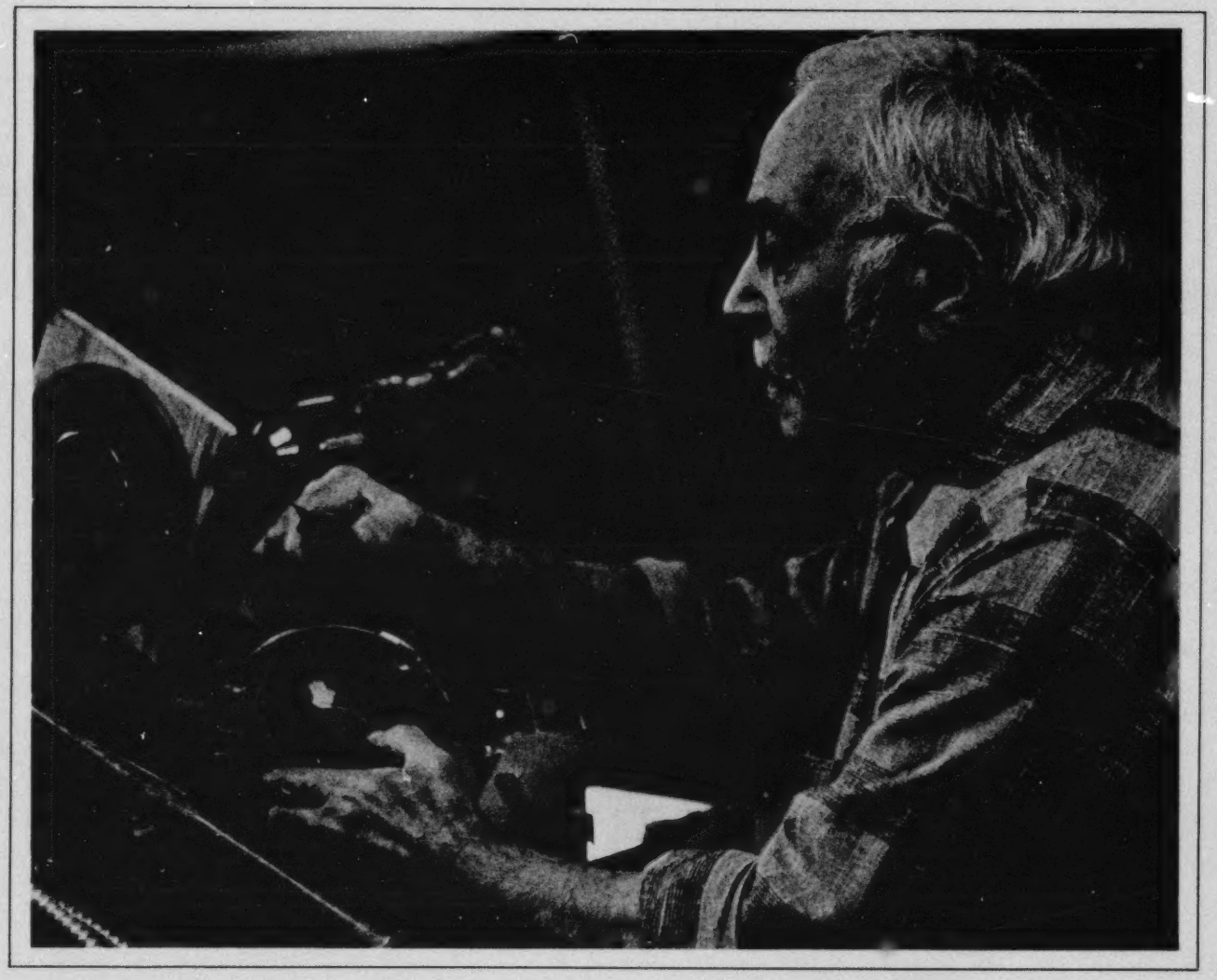
Growth in the availability of retirement income through Social Security and private pension plans—facilitating *voluntary* retirement by workers now is complemented by ADEA protection against *involuntary* retirement for most workers until they reach age 70. To a significant degree, decreased labor force participation by older workers reflects voluntary as compared to involuntary retirement. Nevertheless, involuntary retirement of individuals when they would prefer to continue working or still need their employment income to meet their financial needs and obligations, remains an important national concern.

To some extent, involuntary retirement from the labor force cannot be entirely avoided. For example, this may be the case if a person becomes unable to continue working because he or she develops severe chronic health problems. Also, older workers may lose their jobs and have difficulty getting new jobs if a geographic area or industrial sector is impacted by economic difficulties, or if technological change results in decreases in the demand for certain types of jobs.

Once an individual becomes eligible to receive some retirement income, his or her health, financial obligations, the amount of retirement income available, and prospects for continued employment leading to higher retirement income later, all can influence the decision whether to retire at a specific time and age. Whereas individuals who are not eligible for retirement benefits may have no option but to continue working as long as possible at whatever work they can obtain, a person with somewhat poor health may prefer to stop working if he or she is eligible to receive moderately adequate retirement benefits. Similarly, an older worker who is laid off because a company goes out of business or shuts down a plant where the person works, may prefer to continue to live in the same area on a reduced Social Security retirement income rather than relocate. Thus, there are degrees to which individuals eligible to receive retirement benefits may accept retirement depending on personal circumstances and the degree to which retirement income available to them from Social Security and private pension plans makes leaving the labor force a feasible option.

A person's desire to withdraw from the labor force may also be affected by the consequences of foregoing retirement benefits as a result of continuing to work, and whether the individual foresees opportunities for taking on new employment following eligibility for retirement benefits—including the availability of part-time work. Receipt of private pension benefits is generally predicated on the individual's discontinuing longstanding employment with a particular employer (or in a particular industry covered by a multi-employer pension plan). Pension plan provisions and employer policies may preclude continuing employment in the same work or rescind retirement benefits in the event of reemployment by the same company or in the same line of work. Nevertheless, people receiving retirement benefits may go to work for a different company or go into a new line of work. As more and more people are entering middle age and later years with higher levels of education they may be more employable, and have more flexibility in the types of work they may be able to pursue. Also, with improvements in health care, enhancing the capacity of older Americans to remain active, and with increasing numbers of people living longer, more may choose to pursue employment opportunities, especially in fields where part-time work is available.

Thus, the decision to retire (whether completely or not) is the result of the interaction of a complex series of institutional and personal factors leading to choices made by individual workers. Their choices are significantly influenced by the availability of public and private pension benefits, by individual health, by mandatory retirement policies (where these exist) and by personal obligations, preferences, and plans. The Age Discrimination in Employment Act currently provides protection for older employees up to age 70 from arbitrary involuntary retirement based upon age in the context of other major factors which influence retirement behavior. Thus, the overall effects of the ADEA on retirement patterns are significantly influenced by public and private pension policies and employer personnel policies.



The Retirement Decision

The aging of the population will have a significant influence on the nation over the next fifty years. During this time the percentage of persons aged 65 and over will increase from 11 to almost 20 percent of our national population. Due to declining birth rates, the number of younger people entering the labor force will gradually decline, middle-aged persons will increase their share in the workforce, and later, (after the year 2010) the proportion of persons over age 65 in the population will rise dramatically. This change will affect nearly every aspect of our society and is particularly significant because of the consequences of a continuation of current retirement trends for public and private pension programs.

Retirement trends can be viewed from multiple perspectives. There has been a continuing concern that older people in the labor market may reduce opportunities for other workers. At the same time, mounting costs for public and private pensions have raised concerns that the increasing number of early retirees will place serious additional economic burdens on younger workers. In addition, although a small number of older persons are currently in the labor force, an increasing proportion of retirees and persons approaching retirement now suggest a preference for employment after retirement. To these perspectives must be added: (1) the overall view of the American people that no person should be arbitrarily forced to retire because of age; and (2) the recent shift in attitudes of younger workers who now generally believe that older workers need not retire so that younger employees can be employed.[22]

Because of population aging, trends in retirement behavior, pension costs, and employment preferences of older persons, there is increased concern with labor force participation patterns of older workers. Evaluating the reasons for their reduced labor force participation requires understanding of multiple factors which influence the decision to retire. Such factors include availability of pension benefits, ill health, occupation, mandatory retirement rules, perceived age discrimination and limited employment opportunities. The effects of mandatory retirement rules do not frequently operate as an independent influence on labor force participation. Instead, they usually affect retirement decisions in combination with other factors of which availability of pension benefits is the most significant. Thus, it can be anticipated that removal of mandatory retirement will have some consequences for labor force participation by older workers but the size of the effect will be influenced by the other factors which affect the retirement decision.

Pension Influence on Retirement Behavior

The drop in labor force participation by older persons in recent decades has been the result of a number of factors of which the availability and size of retirement benefits are together the most important. First, Social Security benefits are now provided to virtually the entire labor force. In recent years these benefits have increased at a rate beyond the cost of living and moreover are now available to all workers at ages 62-64 (with an actuarial adjustment due to a longer period of payment). In addition, Social Security provides only a modest three percent annual benefit increment for people who continue employment after age 65 and subjects persons earning more than $6,000 per year to a fifty percent tax on earnings above this amount by reducing benefits received between ages 65 and 70. Thus, the program continues to provide incentives to retire early and disincentives to remain employed.

The growth of private and government employee pension plans has also significantly affected early labor force withdrawal by many employees. Usually, payment of benefits is contingent upon a worker leaving the firm; often, pension credits are not accumulated after the age of normal retirement in the plan (65 or earlier); and many plans will begin paying benefits at very early ages with little or no reduction for early retirement. Thus, private pensions also provide significant incentives to retire and few reasons to remain employed at older ages.

A substantial body of research demonstrates that pension eligibility and higher levels of benefits may result in earlier retirement.[23] The timing of retirement is definitely affected by the benefit provisions of Social Security and private pension plans. With full Social Security benefits available at age 65 and actuarially

[22] *Aging in the Eighties: America in Transition*, Louis Harris and Associates, National Council on the Aging, Inc., October, 1981.

reduced benefits at ages 62-64, in recent years more than half of all retirees have been accepting early reduced benefits. Private pension plans usually provide full benefits at age 65 but often make unreduced benefits available prior to this age and many do not increase benefits for employment after the normal retirement age. Early retirement incentives in private pension plans may be more significant than Social Security in influencing retirement age choices of those older workers who qualify for such benefits. However, both types of pensions clearly provide incentives for early retirement.

Age Discrimination

The ADEA complements the availability of retirement income from pension plans and Social Security by assuring that older workers who do not wish to take advantage of such incentives to retire or are ineligible to do so, are not discouraged from working by discrimination against them based on their age. The 1967 ADEA addressed a significant form of age discrimination in the labor force—the process whereby an older worker loses a job, then encounters age discriminatory attitudes and hiring practices among employers which leads to the worker withdrawing from the labor force. The 1967 ADEA also made it illegal for employers to arbitrarily discriminate against older workers in terminating employees during periods of staff reductions necessitated by adverse economic conditions affecting an industry.

The importance of the ADEA in this respect continues to be evidenced by the fact that termination of employment is by far the most frequent basis for charges of age discrimination being filed against employers. In 1981, nearly half of the age discrimination charges filed with the Equal Employment Opportunity Commission (EEOC) were for termination of employment—7,443 of 15,311 charges. Complaints of discrimination in hiring were the next most frequent reason for charges being filed—12 percent of the charges filed in 1981.

Insofar as it acts to restrain terminations involving age discrimination, restricts discriminatory hiring practices (including discriminatory advertising) and provides redress to people adversely affected by illegal age discrimination in employment, the ADEA is an institutional mechanism mitigating against arbitrary retirement of older workers from the workforce.

During consideration of the 1978 Amendments to the law, it was suggested that the age 65 upper limit in the Act constituted an institutional factor condoning age discrimination against workers reaching age 65, in that it continued to allow mandatory retirement at 65 or later.

Mandatory Retirement

Prior to the 1978 Amendments to the ADEA, various national studies had indicated that small proportions of all retirees (5 to 10 percent) had been "forced to retire" because of employer mandatory retirement age policies.[24] Of course, such policies might also have had "anticipatory effects" encouraging workers to leave employment prior to reaching the mandatory retirement age. Findings from the DOL ADEA Studies demonstrate that in the 1970's, about 60 percent of all employees faced a mandatory retirement age (usually of 65) and that in most instances mandatory retirement policies were accompanied by private pension plans. Findings also indicated that mandatory retirement policies resulted in reducing labor force participation of workers over age 65 by about 5 percent. Because the large majority of older workers who were subject to a mandatory retirement policy were also eligible to receive a private pension benefit at or before the mandatory retirement age, the impact of mandatory retirement

---

[23] *Work and Retirement Data: a Longitudinal Study of Men*, Herbert Parnes and Gilbert Nestel, MIT Press, 1981; *Reaching Retirement Age*, Social Security Administration, 1976; *The Graying of Working America*, Harold Sheppard and Sara Rix, The Free Press, 1977; *Economics of Aging: The Future of Retirement*, Malcolm H. Morrison, (Ed.) Van Nostrand Reinhold, 1982, *Reversing the Trend Toward Early Retirement*, Robert L. Clark and David J. Barker, American Enterprise Institute for Public Policy Research, 1981; *Interim Report on Age Discrimination in Employment Act Studies*, U.S. Department of Labor, Employment Standards Administration, 1981.

[24] "The Economics of Mandatory Retirement" James H. Schulz, *Industrial Gerontology*, Winter, 1974; "Incidence of Compulsory Retirement Policies" Virginia Reno, *Reaching Retirement Age*, Social Security Administation, 1976; "Outlawing Age Discrimination: Economic and Institutional Response to the Elimination of Mandatory Retirement" Robert Clark, David Barker and Steven Cantrell, U.S. Administration on Aging Contract #90-A-1738, 1979.

rules *and* pension plans on the retirement decision must be considered simultaneously.[25]

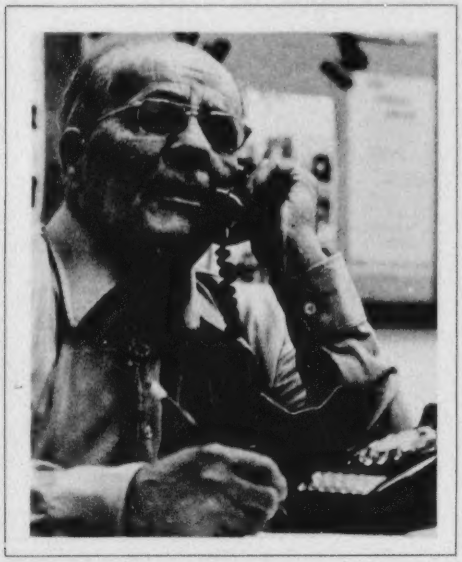
In 1980 about half the U.S. labor force worked in organizations having mandatory retirement age of 70 while the remainder faced no mandatory age whatsoever. In general, firms that had a mandatory age prior to the 1978 ADEA Amendments retained this policy but raised the age to 70 as required by law. Due to a continuation of the early retirement trend, few workers are now directly affected by the higher mandatory retirement age of 70. Nevertheless, the DOL ADEA Studies demonstrate that even this age has negative consequences on the employment of older workers and its removal would encourage more labor force participation by older persons at earlier ages as well as beyond age 70.

In 1981, approximately 3 million persons over age 65 were in the labor force of whom 1.2 million or nearly half, were age 70 and over. This indicates that people over age 70 can actively participate in the labor force and their participation might easily increase if the mandatory retirement age of 70 were eliminated.

Health and Retirement

Health problems and resulting limitations on activity, clearly affect the labor force participation of older persons by limiting many in their ability to work and increasing the likelihood of retirement. In a variety of cross-sectional research studies, health has emerged as an extremely important factor in individual retirement decisions.[26]

In longitudinal surveys conducted by the Social Security Administration and the Ohio State University about half of all men retiring before age 65 did so for reasons of poor health.[27] Nevertheless, over time, the health of older persons has been improving and although this might have resulted in more choices to continue employment, instead, more older persons are voluntarily choosing retirement without facing poor



---

[25] *Interim Report on Age Discrimination in Employment Act Studies*, U.S. Department of Labor, Employment Standards Administration, 1981.

[26] *Reaching Retirement Age*, Social Security Administration, 1976; "Retirement Patterns in the United States: Research and Policy Interaction" Lenore E. Bixby, *Social Security Bulletin*, v. 39, no. 8, August, 1976; "Social Security and the Retirement Decision" Michael Boskin, *Economic Inquiry*, v. 15, January, 1977; "Microeconomic Determinants of Early Retirement" Joseph Quinn, *Journal of Human Resources*, v. 12, Summer 1977; *The Economics of Labor Force Participation*, William G. Bowen and J. Aldrich Finegan, Princeton University Press, 1969.

[27] Retirement History Survey, Social Security Administration, U.S. Department of Health and Human Services. National Longitudinal Surveys of the Labor Force, Ohio State University, Center for Human Resource Research.

health, mandatory retirement policies or long periods of unemployment prior to retirement.

Disability Benefits

Provision of Social Security disability benefits is conditioned on the disability significantly reducing the capacity to continue employment. Thus, although health is a primary factor in evaluating eligibility for such benefits, the determining consideration is ability to continue employment. Since 1960 the Social Security disability insurance program (DI) has provided benefits for disabled workers of all ages who have been covered under the program for at least five of the previous ten years prior to onset of disability. Various studies have indicated that the increased availability and amount of disability benefits have lowered the labor force participation of men prior to age 65.[28] These effects have become more significant since benefit levels under the program have increased significantly since 1960 as have new awards. Thus, the availability of disability benefits now results in reducing the labor force participation of persons who qualify under the program and have not reached the age of qualification for retirement benefits. (Early withdrawal from employment can also occur through the workers' compensation program where benefits can be awarded in the event of permanent disability resulting from on-the-job injuries or occupational diseases).

Wages and Assets

Higher wage levels have characterized the U.S. economy during the post-war period. These wages have been accompanied by increases in public and private pension benefits where benefit amounts are related to wage levels. Thus, the existence of higher wages and accompanying fringe benefits, including pensions, has led to an increase in income at older ages and to the ability to choose to stop work and accept retirement benefits. It also appears that larger asset holdings or income from such assets are associated with earlier retirement.[29]

Unemployment and Retirement

Increasing levels of general unemployment result in lowering the labor force participation of older workers. Unemployment at older ages usually is of longer duration and can lead to early withdrawal from the labor force due to discouragement in the search for other employment. Evidence indicates that many older workers who become unemployed may permanently leave the labor force and accept or await eligibility for pension benefits. The consequences of unemployment may be particularly significant for workers aged 55-64.[30]

Retirement Patterns of Older Women

The dramatic increase in women's labor force participation in the last 20 years has led to considerable interest in their retirement patterns. Findings from the DOL ADEA Studies indicate that married women often link the decision to retire to that of their husbands. Since women are generally several years younger than their husbands, this leads to relatively early retirement. Other studies have also indicated that house equity, husband's Social Security benefit and other pension benefits also lead to earlier retirement for married women. However, an increase in wages has a disproportionate effect in inducing continued labor force participation by older women.[31]

In the future more women will have been employed for their entire careers. A longer work

---

[28] "Allocation of time by Married Couples Approaching Retirement" Robert Clark, Thomas Johnson and Ann McDermed, *Social Security Bulletin*, v. 43, no. 4, April 1980; "Prospective Trends in the Size and Structure of the Elderly Population, Impact of Mortality Trends and Some Implications" Jacob Siegal, *Current Population Reports, Special Studies*, Series P-23, no. 78, 1978; "The Decline in Male Labor Force Participation;; Donald Parsons, *Journal of Political Economy*, v. 88, February 1980.

[29] *Retirement Policy in an Aging Society*, Robert L. Clark, ed., Duke University Press, 1980.

[30] "The Economics of Aging" Robert L. Clark, Juanita Kreps and Joseph Spengler, *Journal of Economic Literature*, v. 16, September 1978.

[31] "Allocation of Time by Married Couples Approaching Retirement" Robert Clark, Thomas Johnson and Ann McDermed, *Social Security Bulletin*, v. 43, no. 4, April 1980.

history will produce higher wages and result in greater investment in employment which may lead to choices of later retirement ages. At the same time however, such work histories will also result in accumulation of higher pension benefits and the option to retire earlier. The overall effect could therefore result in increasing labor force participation between the ages of 45 and 60 but "early" retirement between ages 60 and 65. At this time it is very difficult to predict the future retirement age choices of the very large number of women who have entered the labor force. There is a considerable likelihood that the availability of pension benefits based on employment will become an important factor influencing the retirement decisions of women.

Gradual Retirement and Post Retirement Employment

Gradual retirement through reduced work schedules does not occur very often in the United States. Available information indicates that fewer than 10 percent of men have chosen this alternative and that this choice was affected by the degree to which part-time work was available.[32] It appears that tapered retirement is chosen more often by operatives, service workers and laborers who may need additional income. Few employers currently offer tapered or phased retirement programs and thus there is little opportunity for most workers to choose such an alternative.

Evidence from surveys of retirees during the period 1966-1978 indicates that about 10-15 percent of retirees are generally in the labor force at some point after retirement. While recent data indicate that more older retired persons *suggest* they would accept employment if it were offered, the large majority of retirees continue to say that they would not accept *an offer of employment* if it were made to them. There is also no current evidence to suggest that recent high rates of inflation (now decreasing) have increased the labor force participation of older workers.[33]

[32] "The Retirement Experience" Herbert S. Parnes and Gilbert Y. Nestel in *Work and Retirement Data: A Longitudinal Study of Men*, MIT Press, 1981.

[33] "Inflation and Early Retirement: Recent Longitudinal Findings" Herbert S. Parnes, *Monthly Labor Review*, June 1981.

Recent surveys in 1978 and 1981 by Louis Harris and Associates have indicated that more than half of current retirees and workers approaching retirement suggest that they wish to continue to work after retiring.[34] While it is difficult to reconcile these findings with the lack of interest in employment demonstrated through other surveys, the *attitudes* being expressed in the Harris surveys (that are not actualized by job seeking behavior of older retired persons) may well reflect anticipation of changes in national retirement policies which now tend to favor early retirement. Thus, if significantly more employment opportunitites existed for older workers such as part-time and other flexible work patterns and if financial incentives to remain at work were improved, their labor force participation might well increase. The majority of the 3 million persons over age 65 now in the labor force work on a part-time basis and the proportion working part-time has continued to increase in recent years reflecting both a preference for such employment and some increases in part-time employment opportunities for older workers.

Summarizing, the decision to retire early is influenced mainly by the availability of Social Security retirement benefits and other private pension benefits and by declining health. Other factors contributing to this choice include pension characteristics that provide financial incentives for early retirement, the Social Security earnings test, mandatory retirement policies, availability of disability benefits and lengthy unemployment at older ages. Although mandatory retirement policies reduce the labor force participation of older workers between ages 65 and 70, these policies cannot be evaluated in isolation from the other major factors influencing the retirement decision. It is clear that voluntary retirements (not caused by health problems or mandatory retirement rules) have been increasing and that most older persons remain out of the labor force once they have retired.

Employed older workers represent a very small proportion of the labor force and usually work part-time. Finally, preferences for employment during retirement are growing both among retired persons and those approaching retirement age. Actualization of these preferences has been slow in developing and probably will be constrained by current policies encouraging early retirement. If more flexibile work options were provided by employers it is likely that more older persons would remain in or re-enter the labor force. To the extent that such options were accom-

[34] *The Myth and Reality of Aging in America*, 1978, and *Aging in the Eighties: America in Transition*, 1981, Louis Harris and Associates, Inc. and National Council on Aging, Inc.

panied by financial incentives in public and privite pension arrangements to remain employed at older ages, their effects in stimulating more employment by older workers would be increased.

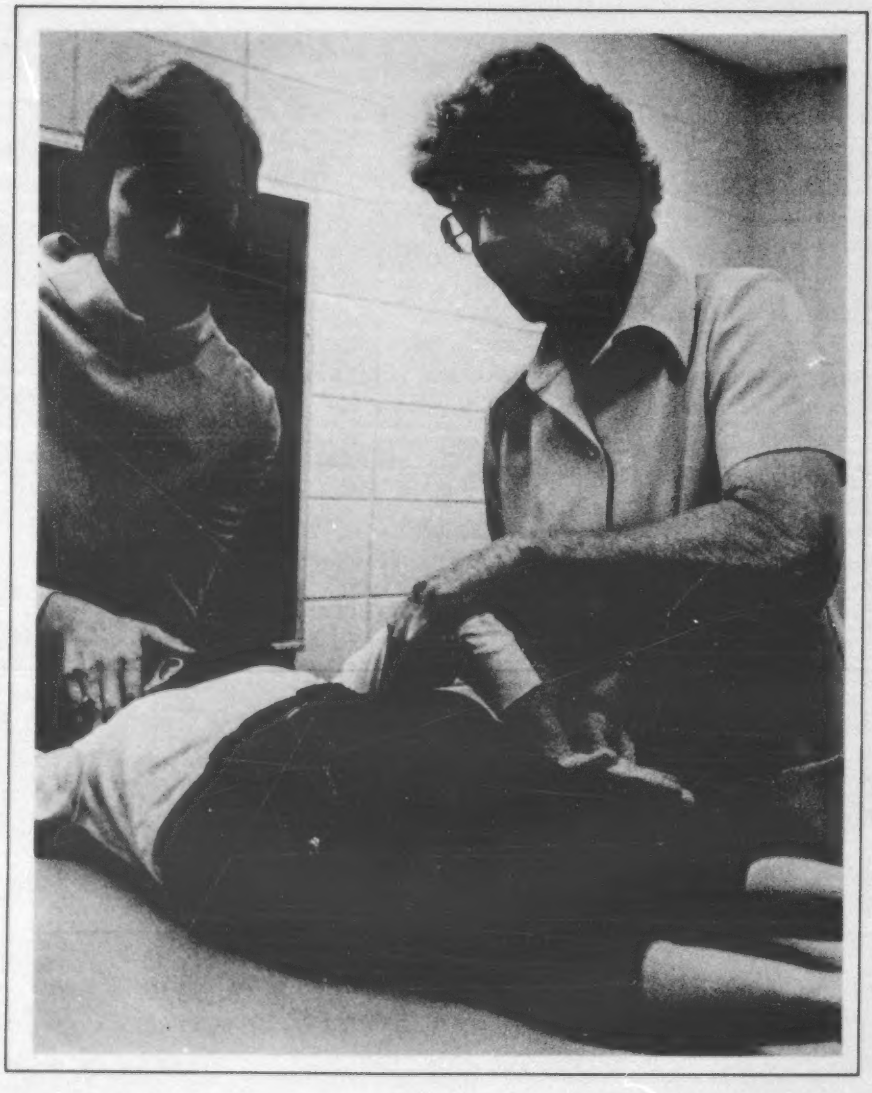
Future Retirement Patterns

There is general agreement among retirement policy experts that a continuation of current early retirement patterns is unlikely in the future. With the likely complete elimination of the mandatory retirement age and increasing preference for continued employment by older workers, more alternatives will gradually be provided to encourage later employment. Some employers, however, may choose to improve pension benefits for older employees in order to continue the perceived advantages of early retirement patterns.

There are several factors which may result in a gradual shift in the early retirement pattern in the years ahead. Among the most important are:

- A decreasing number of young entry level workers aged 18-24 due to decline in the birthrate necessitating retention of more older employees
- Increasing development of flexibile work options by employers (part-time, job sharing, phased retirement)
- Increasing provision of re-training to middle aged and older workers to permit continued productivity in the firm as well as individual educational efforts to improve employability
- More provision of private pension benefit accruals after the normal retirement age
- More utilization of the Social Security delayed retirement credit by older workers continuing their employment after age 65
- Decreasing age discrimination in employment based on reduction of erroneous negative stereotypes of older workers.

Although some older workers will respond to these types of employment incentives, large numbers will continue to retire at early ages during the next twenty years. Those having adequate retirement income, prefering leisure and/or volunteer work and those having health problems, may not choose to remain in or re-enter the labor force even though incentives for later employment become more favorable. The Department of Labor studies undertaken under the Age Discrimination in Employment Act, indicate that labor force participation by older workers is influenced by several important factors including the legally permissible mandatory retirement age and public and private pension benefits. The elimination of mandatory retirement will remove a barrier to employment for some older workers and therefore more will remain employed. However, pension incentives will continue to strongly influence the retirement age decision of most older persons.



Elimination of the Mandatory Retirement Age

The Age Discrimination in Employment Act Amendments of 1978 (Public Law 95-256) raised the mandatory retirement age to 70 for the most private and State/local government employees, and eliminated the age entirely for most Federal employees. The law also prohibited employee benefit plans (including pension and retirement plans) from requiring or permitting the involuntary retirement of any individual between 40 and 70 years of age. However, under the ADEA, pension plans can stop accruing benefits and need not actuarially adjust benefits for employees working beyond the normal retirement age in the plan (often age 65).

Wide congressional support for the 1978 ADEA Amendments was indicative of widespread public opinion that no one should be forced to retire solely because of age. In enacting the Amendments, the Congress recognized that many older workers continued to be subject to mandatory retirement at age 65 irrespective of their ability to perform their jobs. In addition, the Congress was aware of studies documenting the continuing performance capabilities of older workers and refuting stereotypical assumptions that work performance declined with age. Congress was also concerned about the increasing aging of the population, the lengthening period during which retirement benefits are paid because of increased life expectancy, the harmful effects of mandatory retirement on many workers and the difficulty of finding employment after facing mandatory retirement. While Congress did not want to change the utilization of age 65 as the normal retirement age in Social Security and most private and government employee pension plans, it expressed the view that this age should not necessarily be used to require the cessation of employment by older persons.

Passage of the Amendments was therefore intended to extend to capable older workers the right to remain on the job until age 70 and encourage employers to allow more older workers to remain in the labor force, receive earned income, contribute to Social Security and continue a productive role in the economy.

In enacting the Amendments, Congress expressed concerns regarding questions that had arisen about the effects of raising or eliminating the mandatory retirement age. Important questions included:

- Uncertainty as to the impacts of raising or eliminating the mandatory retirement age on labor force participation of older workers and on the employment of younger, minority and women employees
- Potential administrative cost increases for employers, related to performance appraisals for older workers
- Implications for private pension plans of raising or eliminating the permitted mandatory retirement age
- Extent of utilization of the exemption allowing the mandatory retirement of certain high level executives and policymaking employees from age 65 on
- Probable cost and hiring consequences for colleges and universities of raising or eliminating the mandatory retirement age

These and other questions led Congress to require that the Secretary of Labor conduct a major research study to provide information about these issues. The original Age Discrimination in Employment Act (Public Law 90-202, 1967) included a provision requiring the Secretary of Labor to undertake a study of institutional and other arrangements giving rise to involuntary retirement and submit findings to the President and Congress. In response to this mandate, the Secretary had included in Annual Reports to Congress under the Act results from various ongoing national studies of the retirement experience of older persons.

The 1978 ADEA Amendments, expanded the research mandate specified in the original Act, and required that the Secretary of Labor conduct a study to: (a) examine the effect of raising the upper limit of protection under the Act to age 70; (b) determine the feasibility of raising or eliminating the upper age limit; and (c) examine the effect of the exemptions for executive employees and tenured faculty at institutions of higher education. The Secretary was directed to submit an interim report of study findings in 1981 and a final report in 1982.

Between 1979 and 1981, the Department of Labor conducted an extensive series of studies directly responsive to the specific legislative requirements of the 1978 Amendments. The overall results from the studies were transmitted to the President and Congress in December 1981 in the *Interim Report to Congress on Age Discrimination in Employment Act Studies.* The Department's studies included a review of increasing concerns employers have about an aging workforce in light of

changing demographic conditions. This was done to consider the overall significance of mandatory retirement as a factor which reduces employment opportunities for older workers and evaluate how elimination of this factor would affect future employment opportunities.

Employer and Employee Concern with an Aging Workforce

Recent national surveys have documented the increasing employer concern with the gradual aging of the population and particularly with the changing composition of the workforce.

Employers now generally recognize that as the "baby boom" ages, their workforces will contain an increasing number of middle aged and older workers. At the same time, these surveys continue to indicate that a majority of older workers approaching retirement and those already retired suggest a preference for work after retirement (usually part-time).[35]

Employers no longer necessarily view older workers as having reduced capability or productivity. In terms of certain characteristics such as consistency, judgment, quality of work and attendance, older workers are frequently viewed more favorably than their younger counterparts by supervisors. Nevertheless, a majority of employers still share the view of the general public that older workers are discriminated against in the workforce.

Because of the changing age composition of the labor force, a significant number of employers have examined flexible work policies and corresponding employee benefit policies. While relatively few have adopted such approaches, a majority are planning to adjust to a smaller younger labor force in the years ahead. In addition, a majority of employers believe that in ten years: (a) a larger proportion of their workforce will be older workers; (b) more workers will postpone retirement because of inflation; (c) current early retirement policies will have to be changed because of shortages of younger workers; (d) benefit plans will have to be modified to attract and retain older workers; and (e) flexible work arrangements will have to increase to accommodate the growing number of older workers.[36]

Overall these national survey findings indicate that employers now anticipate the aging of the workforce and recognize that new personnel and employee benefit policies will be required for the increasing number of future older employees. An important but less well recognized concern will be improving employer performance appraisal systems not only to eliminate any remaining elements of age bias but also to improve the evaluative quality of appraisal instruments upon which personnel decisions are based.

The surveys indicate that most employers have not experienced any significant changes in average retirement ages of employees since the enactment of the 1978 ADEA Amendments and are evenly divided as to whether the average age will increase in the next five years. Many employers report that a small number of employees have chosen to continue to work beyond the normal retirement age but that in most cases this employment continues for less that two years. Finally, employers continue to be concerned about the productive capacities of older workers, employee benefit costs for this workforce and *potential* promotion slowdowns if many older employees continue to work *for long periods* after the normal retirement age. However, none of these concerns are considered serious problems at present and employers generally expect to be able to adapt to gradual aging of the workforce.

A 1981 Harris poll found that: (a) nearly three quarters of pre- and post-retirees suggest that they want some form of employment after retirement; (b) more than two-thirds of business executives and 90 percent of all U.S. adults oppose a mandatory retirement age; (c) approximately three-quarters of all adults believe that there continues to be substantial employment discrimination based on age which limits the opportunities for older workers. Over the past seven years public attitudes have changed significantly about the need for older workers to retire in order that younger persons have more job opportunities. About 60 percent of the entire population now *disagree* with the idea that older employees should retire to make room for younger

---

[35] "Aging in the Eighties: American in Transition" Louis Harris and Associates, National Council of the Aging, Inc., 1981.; "A Survey on the Effects of the 1978 Amendments to the Age Discrimination in Employment Act", Johnson and Higgins, Inc., 1980; "Retirement Policies and Programs", ASPA-BNA Survey No. 39, Bureau of National Affairs, Inc. 1980.

[36] "Employer Attitudes: Implications of An Aging Workforce", William M. Mercer, Inc., 1981.

workers. (In 1974 less than 50 percent of the entire population disagreed with this proposal.)[37]

In summary, there is now substantial recognition of the significance of an aging population and workforce by employers and employees. Most employers anticipate gradually changing their personnel and employee benefit plans to adjust to the aging workforce. Most older and younger workers while not changing their planned age retirement (usually 60-65) do *anticipate* post-retirement employment.

These general survey findings and the results of the Department's ADEA Studies, suggest that despite the likely continuation of an early retirement trend, if various public and private policies were modified to encourage more flexibility in retirement age, including eliminating mandatory retirement, *substantially more* older workers would be employed. It is important to recognize that while eliminating any mandatory retirement age will result in more employment opportunity for older workers, a major increase in older worker employment will require both modifications in public and private pension programs to provide more balanced incentives for retirement at various ages and development of flexible work options policies by employers.

Research Findings on Mandatory Retirement

In response to the research requirements of the 1978 ADEA Amendments, the Department of Labor conducted under contract three major studies:

1. The National Survey of Employer/Employee Response to the 1978 ADEA Amendments
2. Analytical Studies of the Effects of Raising the Age Limit for Mandatory Retirement in the ADEA
3. The Academic Retirement Study (A Study to Examine the Tenured Faculty Exemption in the ADEA)

In smaller studies, the Department also examined the social and economic characteristics of older workers and alternative employment policies. Detailed findings from each study are available from the Department of Labor.

In conducting these studies, the Department was concerned with both the direct impact of mandatory retirement on individuals and the administrative and financial consequences of the Age Discrimination in Employment Act as amended, for employers. The Department recognized that the retirement decision itself is simultaneously influenced by mandatory retirement policies, public and private pension policies and personnel policies. Study findings examined the consequences of mandatory retirement policies in the context of the multiple factors which influence retirement behavior.

Major Findings Related to Mandatory Retirement Policies

The study examined three major issues—(1) the response of employers and employees to the increase in the permissible mandatory retirement age from 65 to 70, (2) the effect of mandatory retirement ages on labor force participation by older workers, and consequences for younger workers, and (3) prospective older worker labor force participation with mandatory retirement at age 70 and with elimination of mandatory retirement.

[37] "Aging in the Eighties: America in Transition", Louis Harris and Associates, National Council on the Aging, Inc., 1981.

Employer and Employee Response to ADEA

In 1980 about half of the workforce were covered by a mandatory age (usually 65). After passage of the ADEA Amendments most employers that had a mandatory age increased it to 70 to conform to the law but made few other changes in personnel or employee benefit policies. (Only 6 percent of all employees had their mandatory retirement age limit removed as a result of the ADEA Amendments.) Of particular significance were the findings that: (1) the increased mandatory retirement age did not result in increasing costs for performance evaluations since most firms with mandatory retirement already used a performance evaluation system; and (2) of the approximately 50 percent of employers who voluntarily provided pension benefits to workers who remained after the normal retirement age, very few chose to discontinue this policy. Employers reported that their workers continued to retire at relatively early ages between 60 and 65 and they expected little change in this pattern in the near term irrespective of the higher mandatory retirement age. The early retirements were often in response to financial incentives offered by employers including private pension plans with early normal retirement ages, payment of retirement benefits at early ages without reductions and continuation of life and health insurance after retirement. Employers retaining a mandatory retirement age felt it was important primarily to assure promotional opportunities for "younger" workers. However, very few reported that older workers remaining employed were in fact causing promotional blockages or slowdowns to occur. With a continuation of the early retirement trend, little expectation that retirement ages will change soon, and provision of continued incentives to early retirement, most employers do not anticipate changing their personnel and employee benefit policies in the near furture in response to the increased mandatory retirement age. The major effect of the ADEA Amendments on employers therefore was to require the adoption of a higher mandatory retirement age. The law did not generally result in employers changing other retirement-related policies.

The impact of increasing the mandatory retirement age to 70 on employee retirement decisions has been quite limited. Most employees continue to expect to retire between the ages of 60–65. Only 11 percent suggested any recent change in their retirement plans for any reason and *only one percent* suggested that they would retire later due to the higher mandatory retirement age in the ADEA. This limited response may be partly a result of many workers not being aware of the ADEA and the increased mandatory retirement age. The Department's study and other national surveys indicate that 30–40 percent of all employees are aware that there is an age discrimination in employment law. However, of these persons, no more than half know that the mandatory retirement age is now 70. Thus, with such limited knowledge, it is not likely that many workers covered by a mandatory retirement age provision would alter their expected ages of retirement. The DOL findings demonstrated that most people have devoted some prior thought to Social Security benefits and employers pensions. While retirement age plans may change over time, they will not be changed immediately in response to an increase in the mandatory retirement age. Finally, the evidence from the studies suggested that with a higher mandatory retirement age (or no age whatsoever), employees may *gradually* delay their planned age of retirement by 1-2 years. However, over the past twenty years *actual* retirement ages have been consistently lower than *planned* ages. Thus, even if the average *expected* retirement age increases to beyond age 65, it is likely that the later age will not be chosen by many employees because of the availability of early retirement options. Thus far, very few employees have been postponing retirement either in response to a higher mandatory retirement age or for other reasons. Nevertheless, the later age limit has provided some older workers with the opportunity to continue employment and thus contribute to the economy. Eliminating mandatory retirement as an arbitrary barrier to employment based upon age rather than ability, is an important goal. Its achievement will result in more older workers continuing their economic contribution, improving their own economic and social well being, and reducing long held sterotyped beliefs about the limitations of older workers.

Mandatory Retirement Ages and Labor Force Participation by Older and Younger Workers

Study findings demonstrated that the existence of the prior age 65 mandatory retirement rule significantly

reduced labor force participation of older workers. While workers facing mandatory retirement were more likely to stop work than others because they were usually eligible for pension benefits, this did not explain all the difference in their retirement behavior. The higher the private pension and Social Security benefits foregone if employment was continued, the greater the likelihood of retirement. However, the Department's study and many other analyses demonstrate conclusively that mandatory retirement age policies reduce the labor force participation of 60-70 older workers. The Department projects that raising the mandatory retirement age to 70 will induce 250,000 more persons 60-70 years of age to have remained in the labor force by the year 2000. This represents an increase of about 5 percent of the total older workforce. While significant for many individual older employees, the increase represents a very small impact on the total labor force.

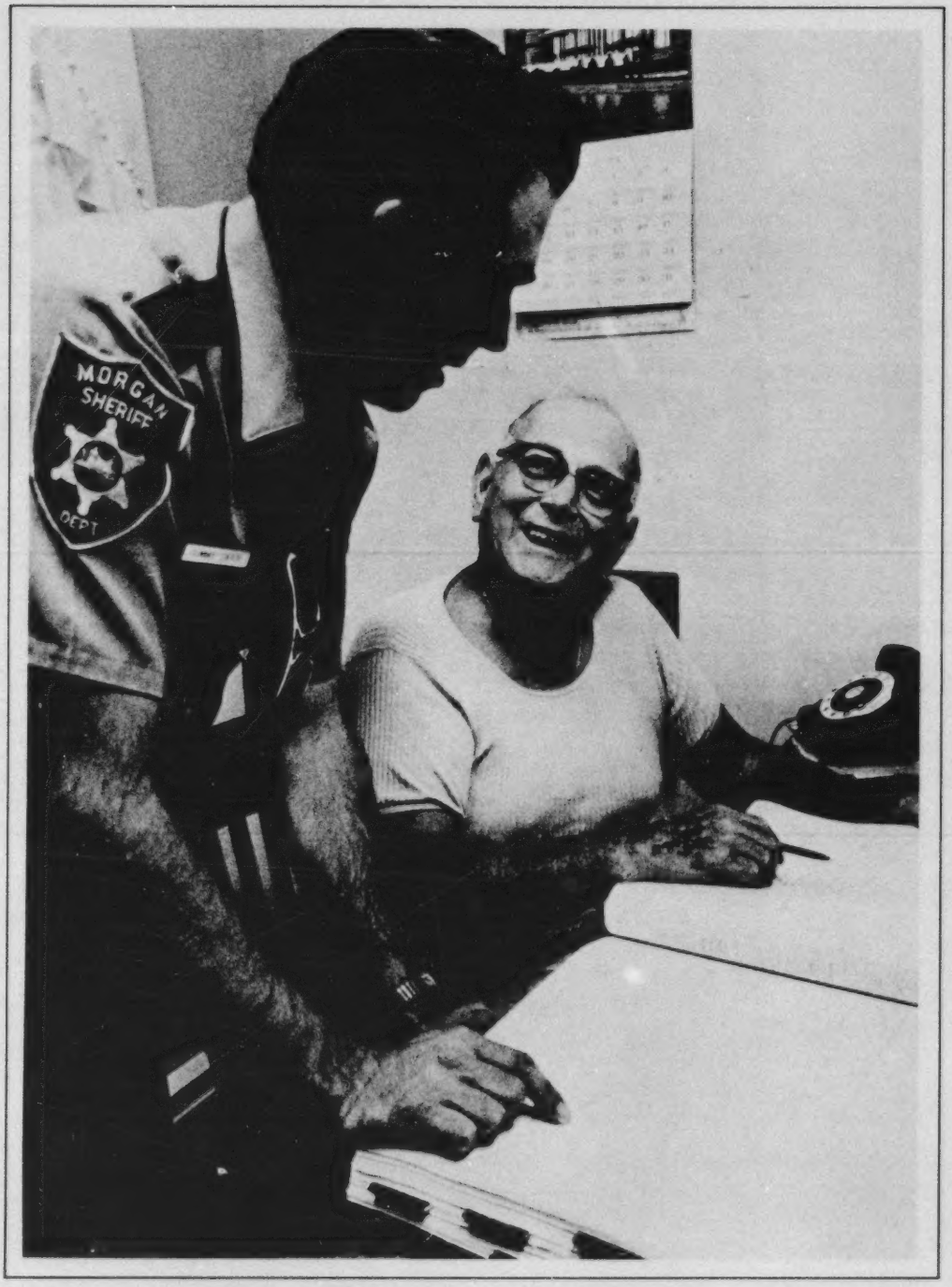
An analysis of the consequences of raising the mandatory retirement age on younger, female and minority workers was also performed. Possible job competition was assessed for youth, female and black workers holding full-time, full-year jobs at wages comparable to older workers. If older workers holding comparable jobs continue to work longer because of the increased mandatory retirement age, then younger workers might be expected to experience fewer jobs and promotional opportunities.

The results indicated that competition between older workers remaining employed and the other "vulnerable" groups of workers was minimal and that problems such as youth unemployment and barriers facing minority workers would not be worsened by the change in the mandatory retirement age. A relatively small number of older workers are expected to continue working past age 65, and those that will do so will represent potential competition for a very small number of younger, female or black workers. Overall economic trends and aggregate labor force demand are of far greater importance in influencing the employment levels of these groups than the effects of a change in the mandatory retirement age.

Labor Force Consequences of Eliminating the Mandatory Retirement Age

The Department of Labor's projections from the national studies of mandatory retirement, indicate that in the year 2000, total labor force participation by persons age 65 and over will have increased by about 5 percent (250,000 workers) as a result of raising the mandatory retirement age to 70. Projections further indicate that the *complete elimination of mandatory retirement* would result in an additional increase in labor force participation of approximately 200,000 workers. This represents an additional five percent increase in workers 65 and over. The DOL projections indicate that taken together, and assuming a continuation of current national retirement policies, the 1978 ADEA Amendments and further legislation eliminating the mandatory retirement age would result in employment of approximately 450,000 additional older workers (aged 60-70) by the year 2000. Therefore, the elimination of any mandatory retirement age, while helpful to thousands of individual older persons who wish to remain employed, is expected to have a marginal impact on the overall labor force no greater than the impact of setting mandatory retirement at age 70 rather than age 65.

Overall, the Department's research has indicated that it is the financial benefits provided under the pension plans to which mandatory retirement rules are usually linked, that remain the important determinants of retirement age choice. Therefore, the long term impact of eliminating a mandatory retirement age on the degree to which older workers will choose later retirement, depends heavily upon how private pension plan and Social Security retirement incentives may change to induce older workers to remain employed longer. At present, the structure of both Social Security and private pension plans provide significant incentives to retire at or before age 65 and minimal financial advantages to remain employed. Under these circumstances, elimination of the mandatory retirement age will have only a very small impact in the overall labor force. If Social Security and private pension plans were changed to provide higher benefits at older retirement ages, then the impact of removing any mandatory retirement age would become more significant. Even under these circumstances however, the overall number of workers who would continue employment beyond age 70 is likely to be small relative to the size of the entire labor force.



30

Mandatory Retirement Under Special Circumstances

Executive Employees

The 1978 ADEA Amendments include a provision which permits the mandatory retirement between ages 65 and 69 of bona fide executives and high policymaking employees if: (a) the employee is in the executive position for the two years immediately preceding retirement and (b) the employee is entitled to an annual retirement pension of at least $27,000. Heads of local, regional or national operations of a corporation, heads of major corporate divisions or immediate subordinates are considered to be "bona fide executives." "High policymakers" are persons having no line authority but who provide policy recommendations to top executives.

In enacting this exemption from the mandatory retirement age of 70, the Congress took notice of the potential problems corporations might encounter if they were unable to assure predictable retirement patterns for top executives, jeopardizing effective overall corporate management. Business firms suggested to Congress that predictable replacement of corporate executives was extremely important to proper management and that most executive retirement systems provided for retirement to commence prior to age 70. Also mentioned were difficulties of evaluating the performance of high level executives and the necessity of maintaining promotion channels at the top of the corporate structure. The executive exemption was therefore enacted to provide flexibility to businesses so that they would not be *required* to retain top executives beyond age 65.

In general the executive exemption permits retention of an age 65 mandatory retirement rule for those firms that have the organizational capacity to administer this policy (the larger firms), that have executives in or approaching the age bracket affected, and that have the least growth in executive positions (the manufacturing firms) and thus the most need for job turnover to maintain promotional channels.

In order to assess the utilization of the executive exemption by business firms, one of the Department's ADEA studies—The National Survey of Employer and Employee Response to the 1978 ADEA Amendments—asked a series of questions regarding the exemption to about 3,000 firms in the nation. In addition, case studies were conducted with a small group of firms to further investigate their use of the exemption.

The national survey indicated that 20 percent of all firms were using the exemption in 1980. The firms were usually large firms and manufacturing companies. An additional 20 percent were considering using the exemption but had not as yet decided to do so. The remainder of the firms—60 percent—were not using the exemption. Firms using the exemption suggested that the major reason was assuring promotional opportunities and secondarily to achieve cost savings. Firms not using the exemption suggested that it was not needed because existing retirement patterns are satisfactory, with most executives retiring by age 65 and that there were too few executives in the firms to justify using the exemption. At present the Department of Labor estimates that the great majority of executives in the nation—75 percent—work for large firms with mandatory retirement policies and are covered under the exemption. Thus, it can be assumed that most executives in large firms who meet the legal definition for exemption can legally be subject to mandatory retirement at age 65.

Summarizing, most large firms are currently using the exemption and thus favor its retention in the ADEA. In these firms, the ability to retire top executive employees at ages 65-69 is very important for maintaining promotional channels and permitting changes in corporate policies without undue delay. There is also a potential for growth in utilization of the exemption since many of the firms who are presently undecided about using the provision have pension plans which do not provide for full retirement benefits before age 65 and may choose to utilize the exemption as more top executives reach retirement age.

Tenured Faculty Members at Institutions of Higher Education

The 1978 ADEA Amendments included a provision that permitted the mandatory retirement between ages 65 and 69 of employees serving under contracts providing for unlimited tenure at institutions of higher education. This provision expired on July 1, 1982 and the permissible mandatory retirement age is now 70 for such employees.

This exemption was enacted because of concerns of university administrators that establishing an immediate mandatory retirement age of 70 when the 1978 ADEA

Amendments were enacted, would have resulted in reductions in hiring younger faculty including minorities and women, difficulties for university budget planners in immediately adjusting to increased costs for older faculty choosing to remain employed and difficulty with maintaining tenure agreements. The temporary faculty exemption was therefore designed to defer the mandatory retirement at age 70 provision until July 1, 1982 to permit colleges and universities with mandatory retirement policies to adjust to the higher mandatory retirement age. During the period of deferral, the Department of Labor was mandated to conduct a study of the consequences of the expiration of the exemption for higher educational institutions.

One of the ADEA studies examined the consequences for universities of the expiration of the tenured faculty exemption. The purpose of the study was to assess probable effects on university costs for retaining older faculty who would choose to continue employment and possible consequences in reducing the hiring of younger faculty members. Although the study could not accurately evaluate possible effects of removing entirely the mandatory retirement age, the direction of such effects was demonstrated.

Predicting the retirement age choices of university faculty members is somewhat more difficult than predictions for the general population. This is the case because the higher education environment is affected by such provisions as tenure contracts, emeritus status for faculty members, better health status of faculty members, expectations for continuing productivity, etc. In addition, universities are faced with the necessity of bringing new intellectural perspectives into their faculties, handling institutional financial difficulties, meeting minority hiring objectives and developing appropriate performance evaluation standards. It is difficult to predict how these factors will affect university policies which will in turn influence faculty retirement patterns. Thus, there remains uncertainty about *future* retirement patterns of faculty members. Nevertheless, the study findings do indicate that the upward shift in the permitted mandatory retirement age from 65 to 70 will modestly increase costs and decrease new faculty appointments at colleges and universities. While institutions will be able to adjust to this change, the removal of any mandatory retirement age may pose more difficult adjustment problems.

The study findings indicated that in 1980, 52 percent of colleges and universities employing 68 percent of all faculty members already had a mandatory retirement age of 70 or above. However, only 20 percent of universities, employing 12 percent of all faculty had no mandatory retirement age whatsoever. Most institutions using a mandatory retirement age other than 70 were private colleges and universities which continued to utilize an age 65 standard and appeared to be awaiting the expiration of the exemption before changing to an age 70 policy.

Study results indicated that raising the permissible mandatory retirement age from 65 to 70 would result in an upward shift in the age distribution of faculty members, somewhat higher institutional costs and declines in hiring rates but this will be followed by a smooth adjustment to the new retirement age policy. Thus, in the short run the effects will be moderate while in the longer term they will be hardly noticeable. The effects will occur over a ten year period 1982-1992 but will be concentrated in the first five years. During this period overall faculty costs are projected to increase by 3 percent and hiring of new faculty might decrease by as much as 25 percent in a few institutions with relatively small academic departments. These estimates however assume a moderate increase in faculty members choosing to retire after age 65. At the time of the study, such an increase had not taken place among institutions that voluntarily shifted from the age 65 standard to mandatory retirement at age 70, and there is no strong indication that retirement patterns of faculty members are changing at the present time.

The study did indicate that a mandatory retirement age of 65 does decrease employment beyond age 65 for faculty members. It further demonstrated that with a mandatory retirement age of 70, on average, the *expected retirement age* of faculty would increase from 65.6 to 67.0 years. At the same time, an examination of available national data on actual faculty retirement age trends shows stable patterns over the past five years with most retirements taking place at ages 65-66, and a gradual increase in retirement at ages 60-64. It appears that faculty facing mandatory retirement rules (often in private institutions) actually have been retiring about two years later than those facing no such provisions (often in public institutions.) This difference may in fact reflect

the age at which full pension benefits become available rather than an effect of mandatory retirement rules. Finally, information on expected age of retirement gathered from current faculty members indicates that relatively significant numbers expected to retire after age 65 but that the actual choice of retirement age will be influenced by availability of pension benefits.

Overall, the study findings show stable faculty retirement patterns and fairly stable enrollments in colleges and universities indicating adjustment to the expiration of tenured faculty exemption will have modest budgetary and personnel consequences for most colleges and universities. The expiration of the exemption, extending protection against mandatory retirement to faculty members between ages 65-69 as of 1982, will not in any way preclude colleges and universities from offering a variety of employment options to faculty members nor will it require modifications in existing pension plan benefits for faculty members. The expiration of the exemption will result in an extension of tenure contracts for some faculty members by as many as five years. However, the study findings demonstrated that the gradual extension of employment by a small number of faculty members can be accommodated by universities and that by 1987 the effects of the increase in the mandatory retirement age to 70 will have significantly attenuated.

Because of the difficulty of predicting future retirement age choices of faculty members, the DOL study was unable to systematically evaluate the potential consequences of *elimination* of any mandatory retirement age for colleges and universities. The consequences of taking this step are not predictable with present information. Since the current exemption expired in July 1982, data on the effects of raising the permissible mandatory retirement age in the entire higher education sector will not be available until this change has been in effect for several years. Therefore, a study should be conducted to ascertain the consequences of a mandatory retirement age of 70 and of eliminating the mandatory retirement age, for universities and faculty members. If current retirement patterns persist (even with a slight increase in the average age of retirement of faculty members) then cost and hiring consequences of having no mandatory retirement age will be modest for many institutions. If, on the other hand, many more faculty choose in the

future to extend employment to age 70 and beyond, there will be significant cost, hiring and promotion consequences. In addition, removal of the mandatory retirement age would mean that tenure contracts would continue indefinitely. This would require that universities adopt improved performance appraisal systems to evaluate faculty members.

Colleges and universities have historically utilized mandatory retirement age policies and have generally agreed that an "appropriate" retirement age for faculty members is between 65 and 70. Often, continued employment options have been provided for faculty after retirement age but there has never been any requirement that such options be offered. Private colleges and universities have usually experienced later retirement ages than publicly supported institutions. In general, colleges and universities have historically adopted personnel and pension policies which have used mandatory retirement age as a benchmark for terminating regular employment. At present university administrators are concerned that given the increasing *preferences* for later retirement now being expressed by faculty members, a complete elimination of the mandatory retirement age might lead to many more faculty remaining employed beyond age 68, resulting in higher costs, reductions in hiring and retention of faculty whose productivity might be declining. Current faculty retirement patterns in institutions having a mandatory retirement age of 70 indicate that very few persons are extending employment beyond age 68. However, it remains difficult to predict the future retirement behavior of faculty employees.

Age Discrimination in Employment Act Requirements and Private Pension Plans

The ADEA permits employers to observe the terms of seniority systems and employee benefit plans (such as retirement, pension or insurance plans) so long as these plans do not require mandatory retirement of any employee prior to age 70.

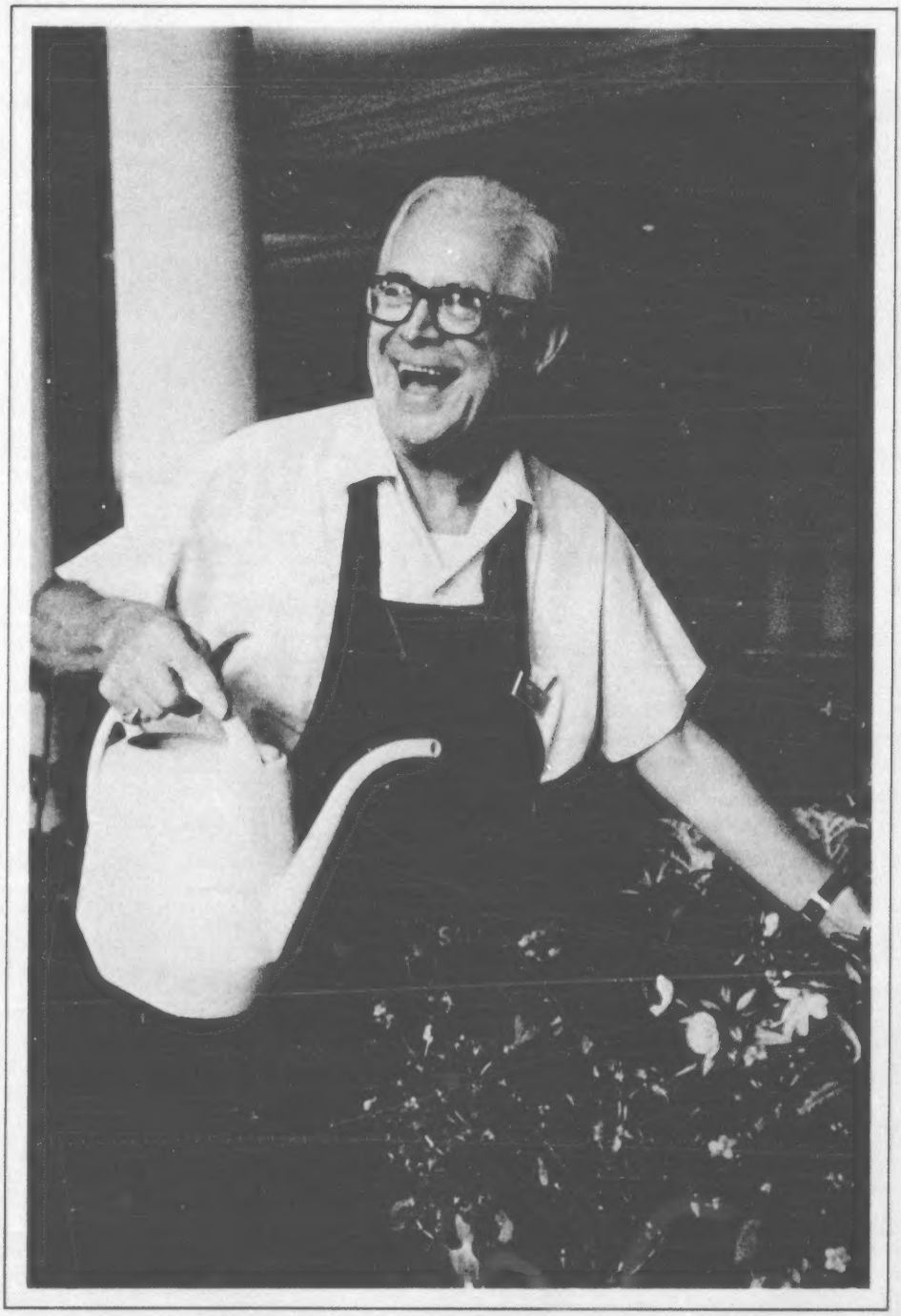
The ADEA does not specify in detail what "terms" will be permitted under this provision. The Department of Labor therefore issued regulatory guidelines and administrative interpretations to clarify this issue after the ADEA Amendments of 1978 were enacted. These regulations permit cessation of providing pension benefit credit for employees who work beyond the normal retirement age in a company pension plan. The regulations were based upon the clearly expressed Congressional intent that the ADEA not conflict with provisions of the Employee Retirement Income Security Act of 1974 (ERISA) which do not require continued crediting of pension benefits beyond the normal retirement age in a pension plan. In 1982, the Equal Employment Opportunity Commission, which now has enforcement responsibility for the Age Discrimination in Employment Act, agreed to continue the Department of Labor regulations regarding pension benefits for employees continuing to work beyond age 65.

At the time the ADEA Amendments were under discussion, Congress was concerned that requiring pension plans to continue to provide credit for employees working after the normal retirement age, in addition to being incongruent with ERISA law, would be so costly for employers as to result in their severely limiting employment opportunities for older workers. Thus, the Congress, after consulting with the Department, agreed that the ADEA would not *require* pension plans to provide credit for employment after the normal retirement age of a plan, which is usually age 65. The regulation also permits employers to reduce certain benefits provided to older workers (life insurance, health insurance and pension disability) so long as the cost for such benefits remains the same for older and younger employees. The intent of this interpretation is to encourage employers to retain and hire older persons by permitting employers to spend the same amount of money on fringe benefits for older as for younger employees. However, the employer can continue full fringe benefits for older workers, and, for pension benefit purposes, may continue to give credit for employees working beyond the normal retirement age, adjust pensions to account for such employment and provide pension payments to re-employed workers.

The Department's ADEA study questioned employers about whether their pension plans provided continuing credit for employees working beyond normal retirement age. Approximately half of all pension plans currently provide such benefits for covered workers. This finding has also been corroborated by several studies conducted by private pension consulting companies. The study also produced a general estimate of the labor force conse-

quences of requiring all pension plans to provide benefits for employment after the normal retirement age. The results indicated that only a very small number of older workers would choose to remain employed under such circumstances. This seems reasonable since of those employers whose pension plans now contain such a provision, few report any significant number of older workers choosing to remain employed with the present mandatory retirement age of 70.

The Department of Labor believes that it would be unwise for ADEA law to conflict with existing provisions of the Employee Retirement Income Security Act. Therefore, in order to minimize such legal conflict and conform to the intent of Congress, the Department continues to support the current interpretation of the ADEA which *permits employers to decide* whether their pension plans will provide credit for employment beyond the normal retirement age. However, the Department has recently become aware of information indicating that the costs for providing pension credit for post-normal retirement age employment may not be inconsequential if large numbers of older workers remain beyond the normal retirement age. In order to make any further recommendations on this issue, additional data must be reviewed on actual and potential costs to employers who currently utilize and may adopt a pension benefit credit provision. The Department is now studying this issue in order to provide a factual basis for future recommendations.



Recommendations

Introduction

The Age Discrimination in Employment Act of 1967 was enacted by Congress "to promote employment of older persons based on ability rather than age; to prohibit arbitrary age discrimination in employment and to help employers and workers find ways of meeting problems arising from the impact of age on employment." Achieving the objectives of the Age Discrimination in Employment Act is an important national goal which requires continuous effort by private employers, State and local governments and the Federal government.

The Department of Labor has developed recommendations for legislative, administrative and private sector activity to assist in achieving these objectives. These recommendations are based on the Department's national ADEA Studies, other public and private sector studies of retirement and employment and periodic consultations with other government agencies, national employer trade associations, trade unions, national organizations representing older persons and State and local government representatives. The recommendations are in two major areas: legislative and policy; and education, information and research.

A. LEGISLATIVE AND POLICY

1. Eliminate the Mandatory Retirement Age by Amending the Age Discrimination in Employment Act.

The Department of Labor studies required by the Age Discrimination in Employment Act Amendments of 1978, indicate that mandatory retirement ages reduce the employment of older workers and result in arbitrary discrimination in employment based on age. The elimination of mandatory retirement will result in increased employment of older workers but will not significantly affect employment opportunities of other labor force groups. Employers have not experienced major administrative difficulties or increased costs with mandatory retirement at age 70 and do not anticipate major changes in employee retirement patterns if mandatory retirement is eliminated. However, concern has been expressed about possible difficulties related to hiring and promoting employees aged 70 and older. The Department of Labor therefore recommends that the Age Discrimination in Employment Act be amended to eliminate any mandatory retirement age but that prohibition of age discrimination in hiring or promoting individuals be limited to persons between the ages of 40 and 70.

Enacting such legislation will prohibit arbitrary discharge, demotion or salary reduction for all employees over 40 years of age and will effectively protect them from losing their jobs on the basis of age. The legislation would represent a fundamental improvement of the ADEA which would substantially increase protection against age discrimination for older employees.

2. Retain the Executive Exemption in the Age Discrimination in Employment Act allowing compulsory retirement of certain executives at age 65 or over.

The executive exemption provision in the ADEA is being used by most large business firms in the nation. A significant number of additional firms are considering utilizing the exemption in the near future. For those firms the exemption is very important in predicting retirement patterns, assuring promotions and changing top management. The exemption is restricted to top executives and thus is applicable to only a small number of highly compensated employees. The exemption is particularly important for large firms with complex personnel systems where top management decisions are significant for the national economy. Retaining the exemption is therefore in the nation's overall economic interest. The Department of Labor therefore recommends that the executive exemption in the Age Discrimination in Employment Act be retained and modified to remove the current limitation of the exemption beyond age 70 so that the exemption provision will conform to the proposed elimination of any mandatory retirement age.

3. Retain a Temporary Exemption in the Age Discrimination in Employment Act at age 70 for Tenured Faculty Members at Institutions of Higher Education.

The elimination of any mandatory retirement age will have unpredictable consequences for the nation's colleges and universities. While adjustment to a mandatory retirement age of 70 will result in some financial and hiring consequences for educational institutions, these will be manageable given current faculty retirement patterns which in general result in a somewhat later average retirement age than in the general population. An abrupt elimination of the mandatory retirement age altogether could impose unpredictable cost and hiring consequences on colleges and universities requiring rapid budgetary and personnel adjustments. There are also implications for the tenure system which have not been fully examined. Due to lack of experience with an age 70 mandatory retirement criterion (which became effective for all covered institutions only on July 1, 1982), predicting future faculty retirement patterns without any mandatory retirement age is extremely difficult.

The feasibility of eliminating any mandatory retirement age for tenured faculty employees at colleges and universities should be examined through a study of the consequences of such a policy for higher educational institutions. Therefore, the Department of Labor recommends that if the mandatory retirement age in the ADEA is eliminated, the tenured faculty exemption be continued at age 70 for a temporary period, during which colleges and universities could evaluate faculty retirement trends, study the probable consequences of eliminating the mandatory retirement age and proceed to develop policies to minimize the consequences of the future elimination of mandatory retirement.

4. Congress should review major policy issues related to the Age Discrimination in Employment Act.

The Department of Labor studies mandated by the 1978 ADEA Amendments and other studies and policy analyses have indicated that further information is needed to assess the consequences of the Act and evaluate the merit of additional legislative changes in terms of effects on employers and employees. Issues of particular importance are: (a) the effects of providing pension credit for employment beyond age 65; (b) the administrative and cost consequences of hiring and promoting older workers at age 70; and (c) the consequences of current ADEA procedural provisions permitting jury trials and liquidated damage awards in age discrimination litigation.

The Department of Labor recommends that Congress review these issues in order to evaluate the need for further legislation.

5. Make technical language changes in the Age Discrimination in Employment Act to indicate that the Equal Employment Opportunity Commission is responsible for enforcement.

B. EDUCATION, INFORMATION AND RESEARCH

The Department of Labor is aware of the need for dissemination of information to business and industry about older worker capabilities. However, it must be recognized that the development of suitable employment alternatives for older workers is in an early stage and much more information and research is needed to assist business firms in recognizing and implementing programs and policies for older workers. Achievement of long term economic growth can be expected to result in significantly more opportunities for older workers in the private sector. Therefore, increasing the dissemination of information and encouraging implementation of non-discriminatory older work employment policies is an important national objective.

The Department of labor is currently addressing this objective through:

- Conducting research sponsored by the National Commission on Employment Policy on—participation of older workers in employment and training programs and program effectiveness; government policies and employment opportunities for older workers; problems of older workers related to plant closings and layoffs; labor market problems of older women, older persons who are members of minority groups and older handicapped individuals; part-time employment; innovative employment alternatives suitable for older workers; and productivity of older workers.
- Supporting a continuing longitudinal study of middle aged and older workers to produce information on retirement age choices, employment at older ages and socioeconomic position of older age groups.
- Providing support for a variety of research and demonstration projects focussing on such areas as alternative work arrangements, part-time employment and retention of older workers.

The Department plans to enhance these efforts through:

1. Sponsoring conferences in conjunction with business associations to provide information to their members on personnel and employee benefit policies for older workers and to provide information on techniques for hiring older job applicants.
2. Developing and disseminating publications describing the capabilities of middle-aged and older workers to business firms throughout the nation with the cooperation of employer associations, unions, and non-profit organizations.
3. Developing a program of technical assistance to private employment agencies and State/local government organizations to assist them in promoting the employment of older workers.
4. Developing publications with information on the most successful employment policies for older workers.

The implementation of these plans would over time: create a broader national understanding of the employ-

ment problems and potentials of older workers; lead to implementation of feasible employment policies for such workers; result in more job opportunities; and significantly reduce age discrimination in employment practices.

Employment opportunities for older men and women both now and in the future will exist primarily in private firms. The Department of Labor has noted that in recent years, a number of firms have developed and implemented innovative personnel and employee benefit policies designed to encourage employment of older workers. Some of the most important policies include: flexible work options programs permitting part-time work, shared jobs and phased retirement; re-employment programs permitting former employees receiving pensions to return to work; re-training programs permitting job shifting based on competence in new technology; elimination of any mandatory retirement age, permitting indefinite continuation of full time employment; revised employee benefit policies providing for continued pension credit for work after the normal retirement age; and comprehensive retirement preparation programs including information on second careers, educational allowances, trial retirement periods and flexible re-hiring policies.

There is now general recognition by business and industry that the workforce is aging, that there will be a decline in younger workers, and that new policies will be needed to assure utilization of the productive capacity of the older worker.

The Department of Labor believes that information on the successful older worker policies and programs adopted by business firms should be widely disseminated in the business community. Therefore, the Department will encourage private sector firms committed to creating and improving employment opportunities for older workers to: (1) disseminate information on viable policies and programs to other business firms to inform them of the capabilities and productivity of older workers; and (2) provide firms with examples of programs and policies of demonstrated effectiveness designed to enhance the employment of older workers.

Conclusion

The removal of age based mandatory retirement requirements through amending the Age Discrimination in Employment Act to prohibit termination of employment based on age, will represent a major step in eliminating age discrimination in employment in the United States. As President Reagan has said ". . . Older Americans possess a reservoir of experience and a depth of knowledge that is a great national resource . . . We know that many individuals have valuable contributions to make well beyond 70 years of age, and they should have the opportunity to do so if they desire."[38] Allowing a continuation of mandatory retirement age standards, in addition to precluding employment for older workers, has also perpetuated myths that they are less productive and competent than other workers. It is time that older employees be evaluated on their performance and not on the arbitrary basis of age. The elimination of mandatory retirement will improve the perception and treatment of older workers and result in significantly more employment opportunities for this growing part of our population.

As age discrimination in employment continues to diminish, more employers will adopt personnel and employee benefit policies to encourage job retention by older employees and increase their job opportunities. These policies will be implemented not only for the benefit of older workers but also to improve the functioning and productivity of business firms who will need to use the capacities of the aging workforce in the years ahead. Recognition of the need for the skills and experience of older workers will result in firms adopting innovative policies and programs for older persons in the future.

---

[38]Remarks by President Ronald Reagan at the Signing Ceremony for Older Americans Month, the White House, April 2, 1982.